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INDIAN PENAL CODE

BEING

•ACT XLV. OF 1860.

ANNOTATED WITH

RULINGS OF THE HIGH COURTS IN INDIA

UP TO JULY 1894.

EIGHTH EDITION.

BY

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PREFACE.

THIS is a revised edition of the Penal Code, in which are embodied all amendments made up to date of publication.

• The rulings of the High Courts in India have been taken from the Indian Law Reports, the Weekly Reporter, the Bengal Law Reports, and several other Reports, down to July 1894.

To save reference to the Criminal Procedure Code (Act X. of 1882), outer marginal notes are inserted opposite each penal section, showing (1) by what Court each offence is hable; (2) whether the police may arrest without warrant or not; (3) whether a warrant or a summons shall ordinarily issue in the first instance; (4) whether the offence is bailable for not; (5) whether it is compoundable or not; (6) whether sanction to prosecute is necessary or not.

D. E. CRANENBURGH.

September 25, 1894.

ERRATA

In p. 27, for 7 W. R. 64, read 7 W. R. 68.

In p. 62. for 14 W. R. 60. read 14 W. R. 68.

In p. 62, for 16 W. R. 66, read 16 W. R. 65.

In p. 64, for 11 W. R. 40, read 11 W. R. 41.

In p. 95, for 4 W. R., Cr. L., 9, 10, Nos. 1137 and 1160 of 1865, read 4 W. R, Ci. L., 9, 10, Nos. 1137 and 1150 of 1865.

In P. 192, for 17 W. R. 46, read 17 W. R. 38.

1. 350, for 7 W. R. 36, read 7 W. R. 56.

In p. 376, for 2 All. 181, read 3 All. 181.

In p. 423, for 3 N. A., N.-W. P., Pt. I., 431, read 3 N. A., N.-W. P., Pt. I., 47.

In p. 440, for Pro. Nov. 10, 1871, 6 Mad. H. C. R. 37, read Pro. Nov. 10, 1871, 6 Mad. H. C. R. 36.

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Ainste lal Bose

THE INDIAN PENAL CODE.

ACT NO. XLV. OF 1860.*

RECEIVED THE G.-G.'S ASSENT ON THE 6TH OCTOBER 1860.

CHAPTER I.

INTRODUCTION.

Preamble.

Whereas it is expedient to provide a General Penal Code for British India; it is enacted as follows:—

1. This Act shall be called The Indian Penal Code, and shall take

Title and extent of operation of the Code.

Title and extent of operation of the Code.

Title and extent of operaare or may become vested in Her Majesty by the
Statute 21 and 22 Victoria, chapter 106, entitled "An Act for the better government of India."+

A& V. of 1867 extends the Penal Code to the Straits Settlements.

2. Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the committed within the said territories.

2. Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories.

Every person.—Stat. 3 and 4 Will. IV., c. 85, empowers the Governor-General im Council "to make laws and regulations for repealing, amending, or altering any laws or regulations whatever now in force, or hereafter to be in force, in the territories of India, or any part thereof, and to make laws and regulations for all persons, whether British or native, foreigners or otherwise, and for all Courts of Justice, whether established by His Majesty's Charters or otherwise, and the jurisdictions thereof; and for all places and things whatsoever, within and throughout the whole and every part of the said territories; and for all servants of the said Company within the dominions of Princes and States in alliance with the said Company, except that he shall not have the power of making any laws or regulations which shall in any way repeal, vary, suspend, or affect any of the provisions of this Act, or any provisions of the Acts for punishing mutiny and desertion of officers and soldiers, whether in the service of Her Majesty or the said Company; or any provision or Act hereafter to be passed in anywise affecting the said Company or the said territories, or the inhabitants thereof; or any laws which shall in any way affect any prerogative of the Crown or the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom or the sovereignty or dominion of the said Crown over any part of the said territories." The question of jurisdiction, however, is dealt with by the Code of Criminal Procedure (Act X. of 1882).

† Here certain words relating to the date of the commencement of the operation of the Code have been repealed, and have therefore been omitted.—See Act XII. of 1891.

[P. C. 2.].

^{*} As amended by Act VI. of 1861, Acts XIV. and XXVII. of 1870, Act XIX. of 1872, Act X. of 1873, Act XII. of 1881, Acts VIII. and X. of 1882, Act X. of 1886, Act XIV. of 1887, Acts I., IV., and XIII. of 1889, Act IX. of 1890, Acts X. and XII. of 1891, and Act III. of 1894.

And not otherwise.—By the expression, "and not otherwise," is meant that no person can be punished for any act which amounts to an offence under the Code otherwise than according to the provisions thereof, except when the same act is made punishable by some local or special law.—Commissioners' Second Rep., ss. 537, 538.

Within the said territories.—Stat. 21 and 22 Vic., c. 106, s, 1, defines the territories throughout which this Act is to take effect to be all territories then in the possession or under the government of the East India Company, and all territories which may become vested in Her Majesty by virtue of any rights vested in, or which might, but for the passing of that Act, have been exercised by, the said Company in relation to any territories.

The subject of an Independent State, though not amenable to the British Courts on a charge of culpable homicide committed out of British territories may be so amenable on a charge of kidnapping from those territories. The Calcutta High Court, under Act I. of 1849, confirmed the conviction of two persons for murder committed in the independent territory of Kuch Behar, they being British subjects and only temporary residents of that State.—Quren v. Dhurmonarain Moitro, 1 W. R. 39. [Kemp and Glover,] Dec. 9, 1864.]

A PERSON who is admittedly a subject of the British Government is liable to be tried by the Courts of this country for acts done by him, whether wholly within or wholly without, or partly within and partly without, the British territory in India, provided they amount together to an offence under the Penal Code.—QUEEN 7. MOULVIE AHMUDOOLLAH, 2 W. R. 60. [Trevor and Loch, JJ. April 13, 1865.]

In prosecuting a British subject for an offence committed on board a British ship upon the high seas, held (dubitante, Phear, J.) that he must be charged with an offence under the English law; 2, that the punishment must be according to English law; 3, that the trial must be according to the procedure of the local Court. Therefore, where a British subject was charged before the High Court with having committed an offence under 7 Will. IV. and I Vic, c. 85, s. 2, on board a British ship, upon the high seas, within the admiralty jurisdiction of the Court, and found guilty of an offence under 14 and 15 Vic., c. 19, s. 5, held that the conviction was good, and that the prisoner would be rightly punished with "rigorous imprisonment," which is defined by s. 53 of the Penal Code to be "imprisonment with hard labour," and that the trial had been rightly proceeded with under Act XIII. of 1865. It ought to appear upon the face of a charge that it had been delivered to the Clerk of the Crown by a Justice of the Peace or a Magistrate, but its not so appearing is a formal defect only, to which objection can only be taken under s. 41 of Act XVIII. of 1862 before the jury has been sworn, and it is not ground for arrest of judgment.—Queen v. Thompson, I B. L. R., O. Cr., I. [Peacock, C.J., and Phear and Macpherson,]]. Sep. 3, 1867.]

WHERE a tindal of a small vessel had been convicted of criminal breach of trust which appeared to have been committed in the Portuguese Possession of Goa, but no order was recorded by the Sessions Judge of Mangalore, who tried the case under s. 9 of Act I. of 1849, held that there ought to be a new trial.—Pro., Jan. 10, 1870, 5 Mad. H. C. R., Ap., 13.

The substantive law applicable to a British-born subject tried in the High Court of Judicature at Bombay for destroying a British ship on the high seas, at a distance of more than three miles from the shores of British India, is the English law, and not the Penal Code, notwithstanding the provisions of Stat. 30 and 31 Vic., c. 124, s. 11. The same substantive law is applicable to prisoners who conspire together in Bombay to destroy such ship on the high seas, and such ship is to be destroyed in consequence. The procedure applicable in such cases is the ordinary criminal procedure of the High Court. The question whether the Indian Legislature has power to legislate with reference to offences committed on the high seas considered. There is not any Act of the Indian Legislature now in force which provides for the offence of destroying a ship when committed at a greater distance than three miles from the coast, or for the abetiment in British India of such an offence so committed.—Reg. v. Elmstone, Whitwell, et als, 7 Bom. H. C. R. 89. [Westropp, C.J., and Bayley and Green, JJ. July 30, 1870]

• An offence committed on the high seas, but within three miles from the coast of British India, as being committed within the territorial limits of British India, is punish, able under the provisions of the Penal Code. The ordinary Criminal Courts of the country have jurisdiction over such offence by virtue of the Stat. 12 and 13 Vic., c. 96,

3. 2 and 3, extended to India by Stat. 23 and 24 Vic., c. 88. Semble.—The Governor-General of India in Council has no power to legislate for offences committed on the high seas outside the territorial limits of British India, though he has power to legislate in respect of offences committed on the high seas within three miles of its coasts. Meaning and effect of Stat. 12 and 13 Vic., c. 69, ss. 2 and 3, considered. Queen v. Thompson (1 B. L. R., O. Cr., 1) commented on. Where certain of the inhabitants of the village of Mahori, in the Thana District, sallied out in boats, and pulled up and removed a number of fishing stakes lawfully fixed in the sea within three miles from the shore by the villagers of a neighbouring village, it was held (i) that a Magistrate, F. P., in the Thana District, had jurisdiction over the offenders; (ii) that the Penal Code was the substantive law applicable to the case; and (iii) that the offence amounted to mischief within the meaning of ss 425 and 427 of that Code.—Reg. v. Kastya Rama, 8 Bom. H. C. R. 63. [Kemball J. Sep. 20, 1871.]

• In 1876, in the case of Queen v. Keyn (L. R., 2 Ex. D. 63), the accused, who was a foreigner in command of a foreign ship, ran, while passing within three miles of the shore of England on a voyage to a foreign port, into a British ship, and sank her, thereby causing a passenger to be drowned. The accused was thereupon charged with manglaughter; but it was held that the English Courts had no jurisdiction to try him. In consequence of this ruling, the Territorial Waters Jurisdiction Act, 1878 (41 and 42 Vic., c. 73), was passed, enacting (s. 2) that "an offence committed by a person, whether he is or is not a subject of Her Majesty, on the open sea, within the territorial waters of Her Majesty's dominions, is an offence within the jurisdiction of the Admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed such offence may be arrested, tried, and punished accordingly."

The following is a true copy of a judgment delivered by the High Court on a reference: "This is a reference made by the Chief Presidency Magistrate for the town of Calcutta under s. 432, Code of Criminal Procedure. In it he states that Henry Thomson, steward of the British ship Lord Brassey, charged Captain Gunning, master of the said ship, with offences committed on the high seas under ss. 323 and 504, Indian Penal Code, and he asks whether the accused must be tried under the English law, or whether he care betried under the Indian Penal Code. It would appear from the case of Queen v. Antiersons [L. R., I Crown Cases Reserved, p. 161) that if Captain Gunning is guilty of any offences, it is because of the General Admiralty Jurisdiction or under 17 and 18 Vic., c. 104, s. 267, or 18 and 19 Vic., c. 91, s. 21. In each case the offence of which he must be tried is an offence under the English law. In the case of Queen v. Mount (L. R., C. P. C., p. 283) a question arose, not as to the nature of the offence, but as to the amount of punishment that should be inflicted. All doubts on that point are now settled by 37 and 38 Vic., c. 27. The answer, therefore, is that the trial must be conducted under the Code of Criminal Procedure, though the offence charged must be an offence under the English law.—

IN THE MATTER OF CAPTAIN GUNNING. [Unreported.] [O'Kinealy and Hill, J]. April 24, 1844.]

A prisoner was found guilty, and sentenced, under Reg. IV. of 1797, to transportation for life, for a murder committed in 1861, before the Penal Code came into operation, and the case was sent up to the High Court to confirm the sentence. Reg. IV. of 1797 was repealed by Act XVII. of 1862, and that Act was wholly repealed by Acts VIII. of 1868 and X. of 1872. Held, on a reference to a Full Bench, that the conviction was illegal, s. 6 of Act I. of 1868, which provides that the repeal of any Act or Regulation shall not affect any offence committed before the repealing Act shall have come into operation, not being applicable.—EMPRESS v. DILJOUR MISSER, I. L. R., 2 Cal. 225. [Garth, C.J., and Komp, Marpherson, Markby, and Ainslie, JJ. Feb. 20, 1877.]

• Up to the 1st January 1862, a person committing the offence of murder was liable to till and punishment under the Regulations. By Act XVII. of 1862, the Regulations prettribing punishments for offences were repealed, "except as to any offence committed teles the 1st January 1862." By the same Act it was declared that no person who should the same should be deprived of any right of appeal or reference which he would have been such Regulations. By s. 6 of Act I. of 1868, the repeal of an Act does at alect anything done, or any offence committed, or any fine or penalty incurred before the tagealing Act shall have come into operation. Under the provisions of this section the repeal of Act VII. of 1862 by Act VIII. of 1868 and Act X. of 1872 did not, in respect of offences committed before the 1st January 1862, affect the penalties prescribed by such Regulations, nor were any of the Regulations prescribing punishments for offences, which

were in force before the passing of Act XVII. of 1862, repealed in respect of offences committed before the 1st January 1862, prior to the passing of Act I. of 1868. accordingly, where a person committed murder in the year 1855, that such person was punishable under the Regulations. Hold also that, inasmuch as such right as the right of reference given by s. 3 of Reg. IV. of 1797 accrues on conviction, and therefore in the present case had not accrued before Act XVII. of 1862 was repealed, it is doubtful whether a person convicted of murder committed before the 1st January 1862 has such fight.— EMPRESS v. MULUA, l. L. R., I All. 599. [Turner and Spankie, JJ. Feb. 15, 1878.]

THE prisoner was tried at Bombay, under s. 411 of the Penal Code, on a charge of having dishonestly received and retained stolen property, knowing or having reason to believe the same to be stolen property. He was also charged, under ss. 108 (expl. 3) and 109, with having abetted that offence. It appeared at the trial that the prisoner was a clerk in the employment of a mercantile firm at Port Louis, in the island of Mauritius. On the 29th October and the 1st November 1879, certain letters addressed by the firm to their commission-agent at Bombay were abstracted from the post-office at Port Louis. The letters contained six bills of exchange belonging to the firm for an aggregate amount of Rs. 26,550. On the 1st November 1879, the prisoner sent all six bills of exchange in a letter to the manager of a bank at Bombay, requesting that the several amounts might. be collected on the prisoner's own account, and remitted to him by bills on Mauritius. The sums were accordingly realized by the bank, and duly remitted to the prisoner. It was not denied that the prisoner obtained possession of the money, and used it as his own. His defence was that the bills had been given to him in payment of a debt. The prisoner was convicted on all the charges; but, the jurisdiction of the Court having been challenged on his behalf, the question was reserved. Held per Sargent and Melvill, JJ. (West, J., dissentiente), "that the bills of exchange, having been stolen at Mauritius, in which island the Penal Code is not in force, could not be regarded as 'stolen property within the provisions of s. 410, so as to render the person receiving them at Bombay liable under s, 411; that the High Court of Bombay had, therefore, no jurisdiction; and that the conviction must be quashed." Previously to the trial at the Sessions the prisoner had applied to the Court for commissions to Pondicherry and Mauritius to take evidence on his behalf. The application was refused on the ground that the High Count had no authority to issue a commission in such a case, but the learned Judge (West, J.) reserved the question for the Full Court. Held that the High Court had no power issue a commission out of the jurisdiction in a criminal case on an application by the accused.— EMPRESS v. S. MOORGA CHETTY, I. L. R., 5 Bom. 338. [Sargent, Melvill, and West, J]. May 3, 1881.]

B, entrusted with rice at M (a port in British India) for conveyance to C (also a port in British India), took the rice to G, a port in foreign territory, and there sold it. was convicted at M ot criminal breach of trust as a carrier under s. 407 of the Penal Code. Held that the Sessions Court at M had no jurisdiction to try the offence under the Code of Criminal Procedure. Held also that no offence was committed on the high seas so as to give the Court jurisdiction under 12 & 13 Vic., c. 29, extended by 23 & 24 Vic., c. 88.—BAPU DALDI v. REG., I. L. R., 5 Mad. 23. [Innes and Muttusami Ayyar,]]. Feb. 26, 1882.]

Punishment of offences committed beyond, but which by law may be tried within, the territories.

8. Any person liable, by any law passed by the Governor-General of India in Council, to be tried for an offence committed beyond the limits of the said territories, shall be dealt with according to the provisions of this Code for any act committed beyond the said territories in the same manner as if such act had been committed within the said territories.

4. Every servant of the Queen shall be subject to punishment under this Code for every act or omission contrary to the pro-Punishment of offences comvisions thereof, of which he, whilst in such service, mitted by a servant of the Queen within a foreign allied shall be guilty * within the dominions of any Prince State. or State in alliance with the Queen, by virtue of

^{*} Here the words, "on or after the said first day of May 1861," have been omitted. having been repealed by Act XII. of 1891.

Act II 1 1898 . The provision of his code apply also to any offence Committed by -0, aim Native Intian Subject of Her majerty in any place without and beyond sortish India, (any other sortich subject within the terribories of any natur orince or Chief in dulia; 5 1(2) any servant of the Queen whether a tritical stricted or such within the Cercitories of sun Mation Prime or chief is dutia. replanation _ In the Section the word offener. includes every act committed ontoide oritiche busia while if committed a british duha, would be punishable emer the code Mustrations A , a Crolle , who is a Matin Indian Subject. · Commils a hunder in leganda Ite Can be trient · alud consisted of murder in any place in Bristial Their in while he may be found. (4) B, a Emopean British Subject, Commits a. munder in Kaomeer. He can be head + Convicted of number in any place in British India in while he may be found. · (F) C. a foreigner who is in this service of the · Punjab Government Commits a hunder in Thind It can be tried to Consider of Muster : I at any place in writish Intia in which have, be found 00-0, a British subject living in Sudar, instigate, & to commit a hunder li. . Sometay. De is guilt of abetting hunder:

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Act II of 1898 the Her provision or here code appea when it were offered immitted sing travier has an Entrest of Her beautiff is my any other strict subject whim we terribories or ann natur brince , thick in dutie; aum and in Alis Queen, whether a driving of sun. Mating Mines on chief in Audia, betienation _ In the section we wond offens. includes every art Committed orbide Ariticle busia shirte it committed i shirted inha, sours a punishald eman kur code Mustring · IA , a cooke who to a Autin Gubian Bulject. munico a hunder in Regarda sto can ve triend had another of man ter in up place is obvioused. And is which he may be found. (h) B a European British subject immish munder in Keomer. He are be bied + were had in a war in aum place in British Audic ii while be man we found. (i) Ca for eigner who is in this service of the Purjat Government wurnis a hunder in Swind . He can be tried to consider of much at any place in swind Jutic in which women in trund (d) 21, a British Endich Pirise in Budor, instigates & to commit a hunder in . Souton. We is guilt of abothing hunder:

any treaty or engagement heretofore entered into with the East India Company, or which may have been, or may hereafter be, made in the name of the Queen by any Government of India.

THE following sections of the Criminal Procedure Code (Act X, of 1882) bear on s. 4 of the Renal Code:—

"183. When a European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India, he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found; provided that no charge as to any such offence shall be inquired into in British India, unless the Political Agent (if there be one) for the territory in which the offence is alleged to have been committed certifies that, in his opinion, the charge ought to be inquired into in British India; provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in British India, shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

"189. Whenever any such offence as is referred to in s. 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed, shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

"190. In ss. 188 and 189, the expression 'Political Agent' means and includes (a) the principal officer representing the British India Government in any territory beyond the limits of British India; (b) any officer in British India appointed by the Governor-General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under the Foreign Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India."

The above section applies to servants of the Queen who commit offences against this Code within the dominions of any Prince or State in alliance with the Queen. The High Court has jurisdiction to try a European British subject for an offence against this Code committed in the territories of a Native Prince in alliance with Government on charges framed under this Code.—Reg. v. Chill, 8 Bom. H. C. R. 92. [Sargent, J. July 3, 1871.]

A EUROPEAN British subject, committed by a Justice of the Peace in Mysore for trial-by the Judicial Commissioner of Mysore on a charge under s. 348 of the Penal Code, was convicted on 10th March 1880. Held that the commitment and conviction were illegal. Quare.—Whether, when a European British subject in Mysore, being a Christian, is accused of an offence not punishable with death or transportation for life, a commitment to the Migh Court at Madras would be legal?—WARD v. Reg., I. L. R., 5 Mad. 33. [Turfler, C.J., and Muttusami Ayyar, J. May 6, 1880.]

Certain laws not to be of the provisions of the Stat. 3 and 4 Will. IV., chap. affected by this Act.

Statute in anywise affecting the East India Company, or the said territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mustiny and desertion of officers and soldiers in the service of Her Majesty, or of any special or local law.

For definition of "special" and "local law," see ss. 41, 42, Ch. II., p. 16, infra.

WHEN a prisoner was convicted of making a false declaration under s. 465 of the Penal Code, the High Court upheld the conviction, though the offence also came under a special law, the Ship Registry Act (X. of 1841), s. 5.—MAD. H. C. RULINGS of 1865 on s. 5.

A CONVICTION under a special law (e.g., s. 29, Act V. of 1861) should not be quashed merely because the facts would cover an offence punishable under the Penal Code.—QUEEN

v. Kassimuddin, 8 W. R. 55; 4 Wyman's Rev., Civ., and Crim. Rep. 17. [Jackson and Hobhouse, JJ. July 30, 1867.]

A CONVICTION under the Penal Code, and also under a special law, in respect of one and the same offence, is illegal.—QUEEN v. HUSSUN ALI, 5 N.-W. P. 49 [Turner,]. Feb. 22, 1873.]

The provisions of s. 174 of the Penal Code are not in conflict with the special provisions of ss. 15 and 16 of Reg. IV. of 1816 (Mad.). In ordinary cases disobedience to the summons of a village-murisif should be dealt with under the Regulation. But if a charge is laid under the Penal Code, the Criminal Court must deal with it.—QUEEN v. RAMACHANDRAPPA, l. L. R., 6 Mad. 249. [Turner, C.J., and Muttusami Ayyar. J. Jan. 25, 1883]

CHAPTER II.

GENERAL EXPLANATIONS.

Definitions in the Code to be understood subject to exceptions.

Throughout this Code, every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations.

- (a.) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.
- (b.) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

Sense of expression once explained.

- 7. Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.
- 8. The pronoun "he" and its derivatives are used of any person, whether Gender. male or female.
- 9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.
- 10. The word "man" denotes a male human being of any age: the word "Man;" Woman." "woman" denotes a female human being of any age.
- 11. The word "person" includes any company or association, or body of persons, whether incorporated or not.
 - " Public."
- 12. The word "public" includes any class of the public or any community.
- 18. The word "Queen" denotes the Sovereign for the time being of the "Queen." United Kingdom of Great Britain and Ireland.

- 14. The words, "servants of the Queen," denote all officers or servants continued, appointed, or employed in India by or under the An Act for the better government of India," or by or under the authority of the Said Statute 21 and 22 Victoria, chapter 106, entitled "An Act for the better government of India," or by or under the authority of the Government of India or any Government.
- 15. The words, "British India," denote the territories which are or may become vested in Her Majesty by the said Statute 21 and 22 Victoria, chapter 106, entitled "An Act for the better government of India."*
- 16. The words, "Government of India," denote the Governor-General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone as regards the powers which may be lawfully exercised by them or him respectively.
 - "Government." denotes the person or persons authorized by law to administer executive government in any part of British India.
 - " Presidency."
- 18. The word "Presidency" denotes the territories subject to the Government of a Presidency.
- -19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

- (a.) A Collector exercising jurisdiction in a suit under the "North-Western Provinces Rent Act, 1881,"† is a Judge.
- (b.) A Magistrate exercising jurisdiction in respect of a charge on which he has power to entence to fine or imprisonment, with or without appeal, is a Judge.
- (c.) A member of a panchayat which has power, under Reg. VII., 1816, of the Madras Code, to try and determine suits, is a Judge.
- (d.) A Magretrate exercising jurisdiction in respect of a charge on which he has power x only to commit for trial to another Court is not a Judge.
- "Court of Justice."

 "Court of Justice."

 "Court of Justice."

 "Court of Justice."

 by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body when such Judge or body of Judges is acting judicially.

Illustration.

A pancháyat acting under Regulation VII., 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

^{**} Here the words, "except the Settlement of the Prince of Wales's Island, Singapore, and Malacca," have been omitted, having been repealed by Act XII. of 1891.

† The words quoted have been substituted for the words, "Act X. of 1859," by the North-Western Provinces Rent Act (XII. of 1881), s. 2.

GENERAL EXPLANATIONS.

CHAP. H.

21. The words, "public servant," denote a person falling under any of the descriptions hereinafter following, namely:-" Public servant."

First.—Every covenanted servant of the Queen;

Second.—Every commissioned officer in the military or naval forces of the Queen while serving under the Government of India or any Government;

Third.—Every Judge; Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any pro-

perty, or to execute any judicial process, or to administer, any outh, or to

interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any such duties; Fifth.—Every juryman, assessor, or member of a panchayat assisting a

Court of Justice or public servant; Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice or by any other

competent public authority; Seventh.—Every person who holds any office by virtue of which he is

empowered to place or keep any person in confinement; Eighth.—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey. assessment, or contract on behalf of Government, or to execute any revenueprocess, or to investigate or to report on any matter affecting the pecuality interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or com-

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district.

Illustration.

A municipal commissioner is a public servant.

mission for the performance of any public duty;

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words, "public servant," occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Rulings.

CONVICT-WARDERS are "public servants" within the meaning of s. 223 of the Pena Code.—QUBEN v. KALLA CHAND MOITRES, 7 W. R. 63. [Seton-Karr and Macpherson]]. May 6, 1867.

An engineer who receives and pays to others municipal moneys is a public servant within the meaning of s. 21, cl. 10, of the Penal Code, although he may not have the power of sanctioning the expenditure of such moneys.—Reg. v. Nantamram Uttamram, 6 Bom. H. C. R. 64. [Gibbs and Lloyd, J]. Sep. 29, 1869.]

The naib-nazir is a public servant within the meaning of s. 409 of the Penal Code, and net the mere private servant of the nazir.—QUEEN v. MAHMOOD HOSSEIN, 2 N.-W. P. 298. [Spankie, J. July 18, 1870.]

An occasional or supernumerary peon appointed under the order of the Board of Revenue in accordance with s. 6, Act V. of 1863 (B.C.), and paid under that section by fees whenever employed to serve process, is a public servant under cl. o, s. 21, of the Penal Code, and, as such, may be tried for receiving an illegal gratification under s. 161 of that Code.—QUERT v. RAMKISTO Doss, 16 W. R. 27; 7 B. L. R. 446. [Ainslie and Paul,]]. July 24, 1871.]

THE word "officer" in s. 21, cl. 9, of the Penal Code, means a person employed to exercise to some extent a delegated function of Government. He must be either himself armed with some authority or representative character, or his duties must be immediately auxiliary to those of some one who is so armed. Hence, an <u>izaphatdar</u>, i. e., a lessee of a village who has undertaken to keep an account of its forest-revenues, and pay a certain proportion to the Government, keeping the remainder for himself, is not an officer, and therefore not a public servant within the meaning of s. 21.—Reg. v. Ramajirav Jivbajirav, 12 Bom. H. C. R. 1. [West and Nanabhai Haridas,]]. Feb. 10, 1875.]

A person appointed by the Government Solicitor with the approval of Government and under an arrangement by the Governor-General in Council to act as Prosecutor in the Calcutta Police Courts is a public servant within the meaning of s. 21 of the Penal Code.—Empress v. Butto Kristo Dass, I. L. R., 3 Cal. 497. [Jackson and Cunningham, I]. Mar. 4, 1878.]

The manager of a Court of Wards' estate paid into a bank, carrying on the treasury business of the Government, a sum of money on behalf of Government. B, a poddar in the bank, demanded and took a reward for his trouble in receiving the money. On B being prosecuted and charged under s. 161 of the Penal Code, help that, although the money might have been paid on account of Government, it was on behalf of the bank, and not on behalf of the Government, that the money was received by the accused; and that the poddar was a servant of the Bank only, and not a public servant within the meaning of ocl. o. s. 21 of the Penal Code.—In the Matter of the Petition of Modun Mohun, I. L. R., 4 Cal. 376. [Ainslie and Broughton, J]. Dec. 10, 1878.]

A PRON employed by the manager of an estate under the charge of the Court of Wards is not a public servant within the meaning of s. 21 of the Penal Code.—QUEEN v. ARAYI, I. L. R., 7 Mad. 17. [Turner, C.]. May 10, 1883.]

A CARTER employed by Government is not a public servant within the meaning of s. 21 of the Penal Code.—QUEEN v. NACHIMUTTU, I. L. R., 7 Mad. 18. [Turner, C. J. June 31, 1883.]

ANY person, whether receiving pay or not, who chooses to take upon himself duties and responsibilities belonging to the position of a public servant, and performs those duties and accepts those responsibilities, and is recognized as filling the position of a public servant, must be regarded as one, and it does not lie in his mouth to say subsequently that, notwithstanding his performance of public duties, and the recognition by others of such performance, he is not a "public servant" within the definition contained in s. 21 of the Penal Code.—Queen-Empress v. Parmeshar Dat, I. L. R., 8 All. 201. [Straight, J. Feb. 5, 1886.]

"Moveable property." are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to any thing which is attached to the earth.

A filed up and immediately carried away, without any authority or right, several cartloads of earth, part of unassessed lands of a village. Held that A was not guilty of theft.

—QUEEN-EMPRESS v. KOTAYYA, I. L. R., 10 Mad. 255. [Collins, C.J., and Kernan and Brandt, J. Mar. 18, 1887.] But see the following ruling:—

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GENERAL EXPLANATIONS.

[CHAP. II.

EARTH, that is, soil, and all the component parts of the soil, inclusive of stones and minerals, when severed from the earth or land to which it was attached, is moveable property capable of being the subject of theft. Whoever dishonestly severs such earth from the earth commits theft. Where a person dishonestly carried away 100 cart-loads of earth from the complainant's land, held that he was guilty of theft. Queen-Empress v. Kotayya (I. L. R., 10 Mad. 255) dissented from.—QUEEN-EMPRESS v. SHIVRAM, el. J. R., 15 Bom. 702. [Birdwood and Parsons, JJ. Mar. 24, 1890.]

"Wrongful gain."

28. "Wrongful gain" is gain by unlawful means of property to which the person gaining it is not legally entitled.

"Wrongful loss."

Secs. 23-28.]

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally

as well as when such person acquires wrongfully. A

to one person, or wrongful loss to another person, is

A-person is said to gain wrongfully when such person/retains wrongfully, Gaining wrongfully; losing

person is said to lose wrongfully when such person wrongfully. is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property. 24. Whoever does anything with the intention of causing wrongful gain

"Dishonestly."

said to do that thing "dishonestly." In construing ss. 24 and 25 the primary and not the remote intention of the accused must be looked at. Queen-Empress v. Girdhari (I. L. R., 8 All. 653) cited.—Queen-Empress v. HARADHAN alias RAKHAL DASS GHOSH, I. L. R., 19 Cal. 380. [Nortis and

Bevěrley, JJ. Ap. 20, 1892.] 25. A person is said to do a thing fraudulently " Fraudulently." if he does that thing with intent to defraud, but not

26. A person is said to have "reason to be-"Reason to believe." lieve" a thing if he has sufficient cause to believe that thing, but not otherwise. 27. When property is in the possession of a person's wife, clerk, or ser-

vant, on account of that person, it is in that person's "Property in possession of wife, clerk, or servant." possession within the meaning of this Code. Explanation.—A person employed temporarily, or on a particular occa-

otherwise.

sion, in the capacity of a clerk or servant, is a clerk or servant within the mean: ing of this section. 28. A person is said to "counterfeit," who causes one thing to resemble

"Counterfeit." blance to practise deception, or knowing it to be likely that deception will thereby be practised. Explanation 1.*—It is not essential to counterfeiting that the imitation

should be exact.

Explanation 2.*—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended, by means of that resem-

another thing, intending by means of that resem-

^{*} These two explanations have been substituted for the original by the Metal Tokens Act (1. of 1889), s. 9.

blance, to practise deception, or knew it to be likely that deception would thereby be practised.

29. The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means or upon what substance the letters, figures, or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations.

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document,

A map or plan which is intended to be used, or which may be used, as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures, or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder," or words to that effect, had been written over the signature.

Ruling.

WHERE a draft petition was prepared with the intention of being used as evidence of a matter, it was held that it fell within the terms of s. 29 of the Penal Code; and as it contained false statements calculated to injure the reputation of a person, the offence was held to fall within s. 469 of the Penal Code.—In the Matter of Sheefalt Ally, 10 W. R. 61; 2 B. L. R., A. Cr., 12. [Loch and Glover, J]. Dec. 14, 1868.].

SO. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted; extinguishems or released, or whereby any person acknowledges that he lies under legal

liability, or has not a certain legal right,

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sprites his name on the back of a bill of exchange. As the effect of this endorsement is the transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

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or if it is breach of some direction of li or if it is fuch a wring as would torm a for from tor a Civil action.

SECS. 31-33.]

GENERAL EXPLANATIONS.

[CHAP. II.

Rulings.

A SETTLEMENT of accounts in writing, though not signed by any person, is a "valuable security" within the definition of s. 30 of the Penal Code.—Eź-parte Kapalavaya Saraya, 2 Mad. H- C. R. 247. [Phillips and Holloway, J]. Nov. 26, 1864.]

A copy of a lease is not a "valuable security" within the meaning of s. 30 of the Penal Code.—Reg. v Khusal Hiram an and Indragir, 4 Bom. H. C. R. 28. [Couch, C. J., and Newton, J. • July 17, 1867.]

A DEED of divorce is a "valuable security" within the meaning of s. 30 of the Penal Code. The presenting of a forged document of such a nature for registration, and obtaining registration, would be "using" within s. 471 of that Code.—Queen v Azilooddern, 11 W. R. 15. [Jackson and Glover. JJ. Mar. 3, 1869]

A SANAD conferring a title of dignity on a person is not a "valuable security" within the meaning of the Penal Code.—Jan Mahomed and Jabar Mahomed a. Queen-Empress; Wari Meah v. Queen-Empress, I. L. R., 10 Cal. 584. [Mitter and Norifs, J]. April 17, 1884.]

"A will."

81. The words "a will" denote any testamentary document.

32. In every part of this Code, except where a contrary intention appears

Words referring to acts include illegal omissions.

from the context, words which refer to acts done extend also to illegal omissions.

Exemple

In recommending that illegal omissions should be treated as acts, the Indian Law Commissioners state as follows: "We cannot defend this rule better than by giving a few illustrations of the way in which it will operate. A omits to give Z food, and by that ordission voluntarily causes Z's death. Is this murder? Under our rule it is marder if A was Z's jailor directed by law to furnish Z with food. It is murder if Z was the infant child of A, and had, therefore, a legal right to sustenance, which right a Civil Coyrt would enforce against A. It is murder if Z was a bedridden invalid, and A, a nurse, hired to feed Z. It is not murder if Z is a beggar who has no other claim on A than that of humanity. A omits to tell Z that a river is swollen so high that Z cannot safely attempt to ford it, and by this omission voluntarily causes Z's death. It is murder if A is a peon stationed by authority to warn travellers from attempting to ford the river. It is murder if A is a guide who has contracted to guide Z. It is not murder if A is a person on whom Z has no other claim than that of humanity. A savage dog fastens on Z; A omits to call off the dog, knowing that, if the dog be not called off, it is likely to kill Z. Z is killed. This is murder in A if the dog belonged to A, inasmuch as the omission to take proper order with the dog is illegal (s. 289). But if A be a mere passer-by, it is got murder."—P, C. Note M. 55.

SPEAKING may be considered an act. Take the following instance: "Suppose it to be proved to the entire conviction of a Criminal Court that Z, the deceased, was in a very critical state of health; that A, heir to Z's property, had been informed by Z's physicians that Z's recovery absolutely depended on his being kept quiet in mind, and that the smallest mental excitement would endanger his life; that A immediately broke into Z's sick-room, and told him a dreadful piece of intelligence which was a pure invention, that Z went into fits and died on the spot, that A had afterwards boasted of having cleared the way for himself to a good property by this artifice. These things being fully proved, ro Judge could doubt that A had voluntarily caused the death of Z; nor dq.we perceive any reason for not punishing A in the same manner in which he would have been punished if he had mixed arsenic in Z's medicine."—Commissioners' First Report, s. 243, P. C. Note M. 59.

• 83. The word "act" denotes as well a series of acts as a single act; the "Act." word "omission" denotes as well a series of omissions as a single omission.

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Sea 34,35 +38 (1) criminal the criminal Care (2) Act which is criminal to GENERAL EXPLANATIONS. the Commission of GENERAL EXPLANATIONS.

Act done by several persons the common intention of all," each of such persons is furtherance of common in tention of all," each of such persons is liable for that act in the same manner as if it were done by him alone.

An American jurist (Bishop, 439) thus explains the law upon the subject: "The true view is doubtless as follows: Every man is responsible criminally for what of wrong flows directly from his corrupt, intention, but no man intending wrong is responsible for an independent act of wrong committed by another. If one person sets in motion the physical power of another person, the former is criminally guilty for its results. If he contemplated the result, he is answerable, though it is produced in a manner he did not contemplate. If he did not contemplate the result in kind, yet if it was the ordinary effect of the cause, he is responsible. If he awoke into action an indiscriminate power, he is responsible. If he gave directions vaguely and incautiously, and the person receiving them acted according to what might be presumed to have been his understanding of them, he is responsible. But, if the wrong done was a fresh and independent wrong springing wholly from the mind of the doer, the other is not criminal therein, merely because, when it was done, he was intending to be a partaker with the doer in a different wrong. These propositions may not always be applied readily to cases arising, yet they seem to furnish the true rule."

THE following remarks of Sir Barnes Peacock illustrate the meaning of the above section: "If the object and design of those who seized Amoordee was merely to take him to the thanna on a charge of theft, and it was not part of the common design to beat him, they would not all be liable for the consequence of the beating, merely because they were present. It is laid down that when several persons are in company together, engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits any offence, the others will not be involved in the guilt, unless the act done was in some manner in furtherance of the common intention. It is also said that although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who committed it, he will not be a felon, merely because he did not attempt to prevent it, or to apprehend the felon. But if several persons go out together for the purpose of apprehending a man, and taking him to the thanna on a charge of theft, and some of the party, in the presence of the others, beat and ill-treat the man in a cruel and violent manner, and the others stand by, and look on, without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties, and acting in concert, and that the beating was in furtherance of a common design. I do not know what the evidence was. All I wish to point out is, that all who are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals."—QUEEN v. GORA CHAND GOPE, 5 W. R. 45: B. L. R., Sup. Vol., 443; 1 Ind. Jur., N. S., 177; 1 Wyman's Rev., Civ., and Crim. Rep. 43. [Peacock, C.J., Trevor and Norman, JJ. Mar. 3, 1866.]

WHERE a blow is struck by A in the presence of, and by the order of, B, both are principals in the transaction; and where two persons join in beating a man, and he dies it is not necessary to ascertain exactly what the effect of such blow was.—QUBEN v. MAHOMED ASGER, 23 W. R. 11. [Markby and McDonell, JJ. Dec. 12, 1874.]

WHERE each of several persons took part in beating a person so as to break eighteen ribs, and cause his death, each of them was held to be guilty, as a principal, of the murder of the deceased.—QUEEN v. GOUR CHUNDER DASS, 24 W. R. 5. [Markby and Morris, JJ. May, 31, 1875.]

WHERE a prisoner is constructively guilty of murder under s. 34 of the Penal Code, it is doubtful if he can be said to have committed the offence of murder within the meaning of s. 149, so as to make other prisoners, by a double construction, guilty of murder.—
IN THE MATTER OF THE PETITION OF JHUBBOO MAHTON, I. L. R., 8 Cal. 739; 12 C. L. R. 233. [McDonell and Field, JJ. Agril 28, 1882.]

THE accused, who were classers employed in the Revenue Survey Department, were charged, under s. 161 of the Indian Penal Code, with taking bribes from the raiyats of

^{*} The words quoted have been added by A& XXVII. of 1870, s. 1.

certain villages. The only evidence against the accused was that of persons who had either subscribed to the bribes, or collected subscription, or paid the money to the accused. They stated that they had offered the bribes, because the classers had threatened to raise the assessment, cut down the hedges, and erect new boundary-marks. As regards this evidence, the trying Magistrate remarked that, even if all the witnesses for the prosecution were treated as accomplices, it was open to him to convict on their uncorroborated testimony, as "there was inherent truth in their statements, and circumstances existed which negatived the presumption of a conspiracy, and evidenced signs of truthfulness. Magistrate was also of opinion that there was a distinction between accomplices who volunteered to assist in the receipt of illegal gratifications and those who assisted under compulsion. In the opinion of the Magistrate, the witnesses in the present case belonged to the latter class, and there was no reason to disbelieve their evidence. He, therefore, convicted the accused under s. 161 of the Indian Penal Code, and sentenced them to rigorous imprisonment and fine. Held (Scott, J., dissenting) that the convictions were illegal, there being no evidence to corroborate the witnesses for the prosecution, all of whom were accomplices. Held also (Scott, J., dissenting), that there was such error in the consideration by the Magistrate of the evidence as to prejudice the accused, and such a failure of justice as to justify the Court in revision in setting aside the convictions. Curiam.—The limits of the application of the doctrine of necessity as an excuse for an act otherwise criminal are those prescribed in s. 194 of the Indian Penal Code, Therefore witnesses, who, in order to avoid pecuniary injury or personal molestation, had offered or given bribes to a public servant, were abettors of the offence of taking an illegal gratification, and their evidence should be treated as that of accomplices. By the law both of India and England the evidence of an accomplice is admissible, and a conviction is not illegal, because it proceeds upon the uncorroborated testimony of an accomplice (s. 133 of the Evidence Act, I. of 1872). But the presumption that an accomplice is unworthy of credit, unless corroborated in material particulars, has become a rule of practice of almost universal application. *Per Scott, J.*—There may be, however, cases of an exceptional character in which the accomplice's evidence alone convinces a Judge, and, if he acts on that conviction, with the character of the witnesses clearly present in his mind, a Revisional Court ought not to interfere in the absence of other circumstances showing a want of judicial discretion. Per Jardine, J.—The mere circumstance of a person being present on a lawful occasion does not raise a presumption of that person's complicity in an offence then committed so as to make s. 34 of the Indian Penal Code applicable.—Reg. v. Farler, 8 C. and P. 106. Where the Magistrate on that ground did make that presumption against an accused person, and applied the provisions of s. 34, he committed an error in law, and the High Court, as a Court of Revision, might acquit the accused.—QUREN-EM-PRESS v. MAGANLAL and MOTILAL, I. L. R., 14 Bom. 115. [Bayley, Scott, and Jardine, J] [.889 ز Sep. 24]

When such act is criminal by reason of its being done with criminal knowledge or intention.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by

him alone with that knowledge or intention.

36. Whenever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an of-Effect caused partly by act and partly by omission. fence, it is to be understood that the causing of that effect, partly by an act, and partly by an omission, is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

14

Co-operation by doing one of several acts constituting an

87. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations.

- (a.) A and B agree to murder Z by severally, and at different times, giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence, though their acts are separate.
- (b.) A and B are joint jailors, and, as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.
- (c.) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food, in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his affice, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder; but as A did not co-operate with B, A is guilty only of an attempt to commit murder.

Persons concerned in criminal act may be guilty of different offences.

88. Where <u>several persons</u> are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

ili-

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

89. A person is said to cause an effect "voluntarily," when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration.

A sets fire by night, to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person. Here A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet if he knew that he was likely to cause death, he has caused death voluntarily.

40. Except in the chapter and sections mentioned in clauses two and three of this section, the word "offence" denotes a thing made punishable by this Code.

1) In Chapter IV., and in the following sections, namely, sections "64, 65, 66, 67, 71," † 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

^{*} The figures "67" have been inserted by Act X. of 1886, s. 21.

[†] The figures quoted have been added by Act VIII. of 1882, s. 1.

And in sections 141, 176, 177, 201, 202, 212, 216, and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.*

An escape from custody when being taken before a Magistrate for the purpose of being bound over to Be of good behaviour is not punishable under either s. 224 or s. 225 of the Penal Code.—Empress v. Shasti Churn Napit, I. L. R., 8 Cal. 3317; 10 C.L. R. 290. [Mitter and Maclean, JJ. Feb. 22, 1882.] Followed in the following case:—

An order was issued to a police-officer, directing him to arrest K, under \$.55 of the Criminal Procedure Code, as a person of bad livelihood. K, with the assistance of three others, resisted apprehension, and escaped. Held that K was not charged with an "offence" within the meaning of that term as defined in s. 40 of the Penal Code, and that consequently no offence made punishable by s. 224 or s. 225 of the Penal Code had been committed in connection with his evasion of arrest. Empress v. Shasti Churn Natil (I. L. R., 8 Cal. 331; 10 C. L. R. 290) followed.—QUEEN-EMPRESS v. KANDHAIA, I. L. R., 7 All. 67. [Mahmood and Duthoit, JJ. Aug. 7, 1884.]

"Special law."

41. A "special law" is a law applicable to a particular subject.

"Local law."

42. A "local law" is a law applicable only to a particular part of British India.

43. The word "illegal" is applicable to everything which is an offeace, or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

Omission to fence a well on private ground within eight yards of a highway, and open to it, is not punishable as a public nuisance.—Queen v. Anthony, I. L. C., 6 Mad. 280. [Innes and Kernan, JJ. Feb. 23, 1883.]

"Injury."

44. The word "injury" denotes any harm whatever illegally caused to any person in body, mind, reputation, or property.

"Life."

45. The word "life" denotes the life of a human being, unless the contrary appears from the context.

" Death."

46. The word "death" denotes the death of a human being, unless the contrary appears from the context.

"Animal,"

47. The word "animal" denotes any living creatures other than a human being.

"Vessel,"

48. The word "vessel" denotes any thing made for the conveyance by water of human beings or property.

49. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

^{*} This section (excepting the amendments made by Acts VIII. of 1882 and X. of 1886) has been substituted by Act XXVII. of 1870, s. 2, for the one originally enacted.

- 50. The word "section" denotes one of those portions of a chapter of this Code which are distinguished by prefixed nu-Section." meral figures.
- 51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or author-"Oath." ized by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

"Good faith."

52. Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

A kobiraj operated on a man for internal piles by cutting them out with an ordinary knife. The man died from hæmorrhage. The kobiraj was charged, under s. 304A of the Penal Code, with causing death by doing a rash and negligent act. It was contended that inasmuch as the prisoner had performed similar operations on previous occasions, It was not a rash act within the meaning of that section, and that, at all events, he was entitled to the benefit of s. 88 of the Penal Code, as he did the act in good faith, without any intention to cause death, and for the benefit of the patient who had accepted the risk. Held that, as the prisoner was admittedly uneducated in matters of surgery, and having regard to the meaning of "good faith" as defined in s. 52 of the Penal Code, he was not entitled to the benefit of s. 88. Held further that s. 88 did not apply to the case, as it was not shown by the accused, on whom the burden of proving that fact lay, that the deceasand have the risk has was supplied in consenting to the operation, and he could not there. ed knew the risk he was running in consenting to the operation, and he could not therefore be said to have accepted the risk. Held also that, under the circumstances, the conviction under s. 304A was a proper one.—Sukaroo Kobiraj v. The Empress, I. L. R., 14 Cal. 566. [Tottenham and Ghose, JJ. April 30, 1887.]

CHAPTER III.

OF PUNISHMENTS.

Punishments.

58. The punishments to which offenders are liable under the provisions of this Code are-

First-Death ;

• Secondly-Transportation :

Thirdly-Penal servitude;

Fourthly-Imprisonment, which is of two descriptions, namely :---

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly—Forfeiture of property; au_What Courd- can only for Sixthly—Fine. (1) happing) + when? 1890.

OFFENCES which are punishable with imprisonment, and for which the offender is also sliable to fine, cannot be punishable with fine only, but some term of imprisonment must be awarded, even if it be only momentary.—Reg. v. Chanviova kom Shidram Shetti, 1 Bom. H. C. R. 4; Reg. v. Rama bin Rabhaji, 1 Bom. H. C. R. 34; Reg. v. Bahirji bin Krishnaji, 1 Bom. H. C. R. 39; 4 Mad. H. C. R., Ap., 18.

ACT XXIV. of 1858 provides for penal servitude as a substitute for transportation in case of Europeans and Americans. Act VI. of 1864 makes provision for whipping. Under this Act offenders are liable to whipping either as an alternative or as an additional punishment. Juvenile offenders committing any offence not punishable with death under the Penal Code may, under s. 5 of the Whipping Act, be punished, whether for a first or

any other offence, with whipping in lieu of any other punishment to which they may be liable for such offence under the Code According to Act X. of 1882, s. 392, and Empress v. Din Ali (I. L. R., 6 All. 482), a juvenile offender is a person under 16 years of age.

A SENTENCE must impose a specific fine on each prisoner.—Pro., Nov. 11, 1869 5 Mad. H. C. R., Ap., 5.

- Commutation of sentence of death shall have been passed, the Commutation of sentence of death.

 Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.
- 55. In every case in which sentence of transportation for life shall have been passed, the Government of India, or the Government of India, or the Government of the place within which the offender shall have been sentenced, may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

WHEN any person has been sentenced to punishment for an offence, the Governor-General in Council or the Local Government may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence, or remit the whole or any part of the punishment to which he has been sentenced. Whenever an application is made to the Governor-General in Council or the Local Government, for the suspension or remission of a sentence, the Governor-General in Counail or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion. If the person in whose favour a sentence has been suspended or remitted fails to fulfil the conditions prescribed by the Governor-General in Council or the Local Government, the Governor-General in Council or the Local Government, as the case may be, may cancel such suspension or remission, whereupon such person may, if at large, be arrested by any police-officer without warrant, and remanded to undergo the unexpired portion of the sentence. Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites, or remissions of punishment. Criminal Procedure Code (Act X. of 1882), s. 401.

The Governor-General in Council or the Local Government may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it death, transfortation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.—Criminal Procedure Code (Act X. of 1882), s. 402.

Sentence of Europeans and Americans to penal servitude. portation, the Court shall sentence the offender to penal servitude, instead of transportation, according to the provision of Att XXIV. of 1855:

Provided that, where a European or American offender would, but for Proviso as to sentence for term exceeding ten years, but not not for life.

Such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.

^{*} This proviso has been added by Act XXVII. of 1870, s. 3.

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• •57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation Frastions of terms of punishment. for twenty years.

UNDER ss. 57, 376, and 511 of the Penal Code, a sentence of ten years' transportation, or of five years' rigorous imprisonment, may be passed for the offence of attempt to committane; but a sentence of seven years' rigorous imprisonment, commutable under s. 59 of the Penal Code to seven years' transportation, is illegal.—QUEEN v. JOSEPH MERI-AM, 10 W. R. 10; 1 B. L. R., A. Cr., 5. [Loch and Glover, JJ. July 6, 1868.]

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with Offenders sentenced to transportation how dealt with until transported in the same manner as if sentenced to rigorous imuntil transported. prisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

59. In every case in which an offender is punishable with imprisonment $^{f L}$ for a term of seven years or upwards, it shall be com-In what cases transportapetent to the Court which sentences such offender, tion may be awarded instead of imprisonment. instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

If a person concerned in a dacoity unintentionally commits murder, he is liable to putishment under s. 306 of the Penal Code, but he cannot be separately convicted of murder under s. 302, and of committing dacoity under s. 305. Where the law gives the alternative punishments of death, transportation for life, and rigorous imprisonment extending to ten years, a sentence of 14 years' transportation is illegal. If the Judge thinks it propes to pass a sentence of transportation short of life, he should pass a sentence of imprisonment for the term fixed by law, and then, under s. 59, change it to transportation for the period.—QUEEN v. RUGHOO, W. R. Sp. 30. [Loch and Jackson, JJ. May 3, 1864.]

UNDER s. 59 of the Penal Code, a Court can sentence to transportation only in a case in which the offence is punishable with imprisonment for seven years or upwards. may, in passing sentence for the offence, commute the imprisonment to transportation, but it cannot commute the sentence after the sentence of imprisonment has been passed. QUEEN V. PREM CHUND OUSAWAL, W. R. Sp. 35. [Jackson and Glover,]]. June 6, 1864.]

To bring s. 59 of the Penal Code into operation, the punishment awarded on one of ence alone must be seven years' imprisonment, and cannot be made up by adding two sentences together, and then commuting the amalgamated period to transportation. two offences of robbery and of voluntarily causing hurt, when combind, are punishable under s. 394 alone, and not under ss. 392 and 394.—QUEEN v. MOOTKEE KORA, 2 W. R. I. Kemp and Glover, JJ. Jan. 2, 1865.]

TRANSPORTATION can only be substituted for imprisonment when the offender is senunced to at least seven years' imprisonment in one case.—Queen v. Tonooram Malee, 3 W. R. 44. [Kemp and Seton Karr, J]. July 11, 1865.]

A SENTENCE of transportation under ss. 412 and 59 of the Penal Code cannot exceed from the years.—Queen v. Mohanundo Bhundary, 5 W. R. 16. [Seton-Karr and Macpher in J. 194]. son JJ. Jan. 20, 1866.]

A SENTENCE of transportation cannot be less than seven years. To bring s. 59 of the penal Code into operation, the punishment awarded in each offence alone must not be less than seven years' imprisonment. A general sentence of transportation for two or nore offences, when only one of the punishments awarded is seven years' imprisonment, is Hegal.—QUEEN v. SHONAULLAH, 5 W. R. 44. [Macpherson and Glover, J]. Mar. 3,

UNDER s. 59 of the Penal Code, no sentence of transportation for a shorter period than seven years can be passed on any charge. Therefore, where a prisoner was convicted on separate charges of giving false evidence in a judicial proceeding under s. 193. and of

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forgery under s. 467, and sentenced to seven years' transportation for the first offence, and a further period of transportation for three years for the second offence, the second sentence was quashed as illegal.—Queen v. Gour Chunder Roy, 8 W. R. 2. [Norman and Seton-Karr, J]. June 3, 1867.]

An officer exercising the powers described in s. 1. Act XV. of 1862, is competent, under the provisions of s. 59 of the Penal Code, to pass a sentence of transportation for seven years instead of awarding sentence of imprisonment.—In the Matter of Bhodhooa, 9 W. R. 6; B. L. R., Sup. Vol., 869; 5 Wyman's Rev., Civ., and Crim. Reporter 20. [Peacock, C.J., and Seton-Karr, Jackson, Macpherson, and Hobhouse, JJ. Jan. 14, 1868.]

A was convicted of an attempt to commit rape, and was sentenced by the Judge to rigorous imprisonment for seven years, which he commuted, under this section, to transportation for the same term. Held that, under ss. 376 and 511, Penal Code, sentence to imprisonment for the offence committed could not be for a longer term than five years, and such sentence could not be commuted, under s. 59, to transportation for a longer term, although, if the sentence of transportation had been passed in the first instance, it might have been for 10 years.—Queen v. Joseph Meriam, i B. L. R., A. Gr., 5; 10 W. R. 10, [Soch and Glover, J]. July 6, 1868.]

WHEN an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment.—Reg. v. Naiada, I. L. R., i All. 43. [Turner, Offg. C.J., and Pearson, Spankie, and Oldfield, JJ. Aug. 23, 1875.]

S. 59 of the Penal Code does not authorize the substitution of transportation for the imprisonment to which a Court can sentence an offender in default of payment of fine.—Kunhussav. Reg., I. L. R., 5 Mad. 28. [Innes and Muttusami Ayyar, J]. Feb. 28, 1882.]

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

Shall be wholly rigorous, or that any part of such imprisonment shall be rigorous and the rest simple.

WHENEVER any youthful offender is sentenced to transportation or imprisonment and is, in the judgment of the Court by which he is sentenced, (a) under the age of 16 years and (b) a proper person to be an inmate of a reformatory school, the Court may direct that, instead of undergoing his sentence, he shall be sent to a reformatory school, and be there detained for a period which shall be not less than two years and not more than sever years, and which shall be in conformity with any rules made under s. 22, and for the time being in force. The powers so conferred on the Court shall be exercised only by (a the High Court, (b) the Court of Session, (c) a Magistrate of the First Class, (d) a Magistrate of Police or Presidency Magistrate in the towns of Calcutta, Madras, and Bombay —Reformatory Schools Act (V. of 1876), s. 7.

WHENEVER any youthful offender under the age of 16 years has been or shall be sentenced to imprisonment, the officer in charge of the jail in which such offender is confined may bring him before the Magistrate within whose jurisdiction such jail is situate; and the Magistrate, if he thinks the offender (a) under the age of 16 years, and (b) a proper person to be an inmate of a reformatory school, may direct him to be sent to a reformatory school, and to be there detained for a period which shall be not less than two and not more than seven years, and which shall be in conformity with any rules made under s. 22, and for the time being in force. In this section "Magistrate" means in the tewns of Calcutta, Madras, and Bombay, a Magistrate of Police or Presidency Magistrate, and elsewhere a Magistrate of the First Class.—Reformatory Schools Act (V. of 1876), \$7.8.

EVERY youthful offender so directed by a Court or Magistrate to be sent to a reformatory school shall be sent to such reformatory school as the Local Government may from time to time appoint for the reception of youthful offenders so dealt with by such Court or Magistrate.—Reformatory Schools Act (V. of 1876), s. 9.

A SENTENCE of imprisonment ought to commence from the time that the sentence is passed, unless there is some lawful reason for ordering it to commence at some future period. Except as in the cases provided for by ss. 46, 47, and 48 of the Criminal Proce-

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dure Code (Act XXV. of 1861), a Magistrate cannot authorize a sentence passed by him to take place from some future date, nor (except as provided for by s. 421 of the Code of Criminal Procedure) can a sentence, which is to take place immediately, be suspended. IN THE MATCER OF KRISHNANAND BHATTACHARJEE, 3 B. L. R., A. Cr., 50; S. C., 12 W. R. 47 (where the name is given as KISHEN SOONDER BHUTTACHARJEE).

61. In every case in which a person is convicted of an offence for which Sentence of forfeiture of he is liable to forfeiture of all his property, the offend-property. 5. 121 - 122, be shall be incapable of acquiring any property, except for the benefit of Government, until he shall have undergone the punishment awarded or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Illustration.

A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A. The estate becomes the property of Government.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property,

Forfeiture of property in respect of offenders punishable with death, transportation, or imprisonment. 74/4

moveable and immoveable, shall be forfeited to Government; and whenever any person shall be convicted of any offence for which he shall be transported, or sentenced to imprisonment for a term of seven years or upwards, the

Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment shall be forfeited to Government, subject to such provision for his family and depend: ants as the Government may think fit to allow during such period.

S. 62 of the Penal Code, which provides for forfeitures, limits them to cases where the parties shall have been transported, or sentenced to imprisonment for at least seven years.—Queen v. Kripamoyee Chassanee, 8 W. R. 35. [Kemp and Glover,]]. July 8, . 1867.]

WHERE a zamindar was convicted of wrongfully keeping in confinement a kidnapped person, and was sentenced to transportation by the Sessions Judge, who added a sentence of forfeiture of the rents and profits of the prisoner's estates under s. 62 of the Penal Code, the High Court set aside the sentence under s. 62 as too severe. That sentence should be inflicted for offences of the most atrocious kind, or for offences committed under the most aggravated circumstances.—Queen v. MAHOMED AKHIR alias TOTAH MEEAH, 12 W. R. 17. [Jackson and Markby, JJ. June 29, 1869.]

68. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited. Amount of fine. but shall not be excessive.

A JOINT-MAGISTRATE was held not competent to direct, under s. 44 of the Code of , Criminal Procedure (Act XXV. of 1861), that a portion of a fine inflicted under s. 434 of the Penal Code be paid to an amin for the purpose of paying the expense of his deputation to restore the land-marks which had been destroyed by the opposite party.—QUEEN . MOORUT LOLL, 6, W. R. 93. [Kemp and Markby, JJ. Dec. 21, 1866.]

THE following important remarks were made by the High Court (Jackson, J.) in a case in which the accused moved the Court on the ground that the fine (Rs. 500) imposed on him by a Magistrate was excessive: "It is not shown in any way what the income of the petitioner was, or why the fine is excessive. An application on such a ground should be supported by proof of what the income of the petitioner was, and that the fine was altogether disproportioned to that income, and oppressive. The description of fine which it was the object of this section to prohibit was a fine which it would be impossible or

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very difficult for the accused person to pay, or wholly disproportioned to the character of the offence. And to this it may be added that it is doubtful whether the section shed has any application to fines inflicted by a Magistrate. By its terms it applies to cases where the amount of fine is unlimited by law. Now, the power of the Magistrate to fine is, in all cases, under the Penal and Criminal Procedure Codes, limited to Rs. 1,000; and it is only the Court of Session or the High Court that can inflict fines to an unlimited amount."—Queen v. Abdur Ruhman, 7 W. R. 37. [Jackson, J. Mar. 1, 1867.]

WHENEVER, under any law in force for the time being, a Criminal Court imposes a fine, or confirms, in appeal, revision, or otherwise, a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied (a) in defraying expenses properly incurred in the prosecution; (b) in compensation for the injury caused by the offence committed, when substantial compensation is, in the opinion of the Court, recoverable by civil suit. If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.—Crim. Pro. Code (Act X. of 1882), s. 545.

At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under s. 545.—Crim. Pro. Code (Act X. of 1882), s. 546.

64. "In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fise, Sentence of imprisonment in default of payment of fine. whether with or without imprisonment;

"and in every case of an offence punishable with imprisonment or fine, or* with fine only, in which the offender is sentenced to a fine,"† it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.

PRISONERS were sentenced to fines under ss. 21 and 22 of Mad. Act III. of 1864, and in default of payment of fine to rigorous imprisonment. Held that, as fine in these cases was the only assignable punishment, and by ss. 30, 31, and 32, a specified procedure is laid down for the levy of the penalty, s. 64 of the Penal Code had no application.—Pro., Nov. 20, 1871, 6 Mad. H. C. R., Ap., 40.

Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.

65. The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed onefourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as note.

HELD by the majority of the Court that an offender, who has undergone the full term of imprisonment to which he was sentenced in default of the payment of a fine, is still liable to have the amount levied by distress and sale of any moveable property belong ing to him, which may be found within the jurisdiction of the Magistrate of the District whether the officer who inflicted the fine issued any special directions on the subject of not. (Seton-Karr, J., dissenting).—Queen v. Modoosoodun Day, 3 W. R. 61. [Kemp and Seton-Karr, JJ. Aug. 15, 1863.

A SUBORDINATE Magistrate of the First Class has no power under s. 45 of the Code of Criminal Procedure to award any greater sentence of imprisonment in default of # pay ment of fine than six weeks in the case of persons convicted of being members of an un lawful assembly.—Phoolman Tewary v. Satram Ojha, 6 W. R. 51. [Norman and Seton-Karr,]]. July 30, 1866.] Settly - 6 multi or fine or both.

† The clauses quoted have been substituted by Act VIII. of 1882, s. 2, for the words In every case in which an offender is sentenced to a fine."

^{*} The words italicized have been inserted by Act X. of 1886, s. 21.

he defender may issue a warrant for the levy of the amount by distress and sale. The successor in office of a Judge or Magistrate may levy a fine imposed by his predecessor. But the Court which levies the fine must be the same as the Court which imposed it.— CHUNDER COOMAR MITTER v. MODHOOSOODUN DEY, 9 W. R. 50. [Peacock, C.J., and Jackson, Phear, Macpherson, and Mitter, J]. Mar. 20, 1868.]

IMPRISONMENT in default of payment of a fine inflicted under Bom. Act VII. of 1867, 1. 31, ought to be simple, not rigorous.—Reg. v. Bechar Khushal, 5 Bom. H. C. R. 43. [Newton, Offg. C.J., and Tucker, J. June 11, 1868.]

The sentence of imprisonment passed in default of the payment of a fine inflicted under s. 200 of the Penal Code (for committing a public nuisance) should be one of simple (not rigorous) imprisonment —Reg. v. Santu bin Lakhappa Kore, 5 Bom. H. C. R. 45. [Couch, G.]., and Newton, J. 'June 17, 1868.]

WHERE a Magistrate sentenced a person, who had neglected to take out a license, under Act XXI. of 1867, s. 15. and Act XXIX. of 1867, s. 3, to pay a fine of ten rupees, and in efault of payment to suffer seven days' simple imprisonment, the High Court reversed so much of the sentence as awarded imprisonment, as the trying Magistrate had, under the Act, no power to make such an order.—REG. v. CHENAPPA VALAD NAGAPPA, 5 Bom. H. C. R. 44. [Newton and Tucker, J]. June 17, 1868.]

S. 45 of the Criminal Procedure Code makes applicable the provisions of s. 65 of the Penal Code, not only to offences falling under that Code as defined in its 40th section, but to every case in which a Magistrate has jurisdiction under s. 21 of the Crimin. I Procedure Code. Imprisonment for one month awarded in default of payment of a fine under s. 3 of the Salt Revenue Act (XXXI. of 1850) was accordingly reduced to three weeks' simple imprisonment.—Reg. v. Vithoba bin Soma, 5 Bom, H. C. R. 61. [Newton and Tucker, J]. July 30, 1868.]

A SUBORDINATE Magistrate of the First Class has power to deal with the case of an offence provided for by a special law—in this case Act III. of 1863 (B. C.)—when the punishment awardable is six months' imprisonment and fine only, s. 67 (and not s. 65) of the Panal Code being applicable to such a case.—In the Matter of Chunder Pershad Singh, 10 W. R. 30. [Loch and Glover, J]. Aug. 24, 1868.]

THE Income-tax Act (IX. of 1869, supplemented by Act XXIII. of 1868) having been passed subsequently to the General Clauses Act (I. of 1868), s. 5 of the latter authorizes the award of imprisonment in default of payment of the fine imposed under s. 25 of the former.—Reg. v. Sangapa bin-Bashiapa, 7 Bom. H. C. R. 76. [Gibbs and Melvill, JJ. Dec. 1, 1870.]

In a case of assault, a sentence inflicting a fine of Rs. 50, and awarding imprisonment for one month in default of payment of the fine, is illegal, with reference to ss. 65, 325 of the Penal Code.—In the Matter of Jehan Buksh, 16 W.R. 42. [Kemp and Ainslie, JJ. Sep. 2, 1871.]

S. 309 of the Criminal Procedure Code does not be sent as a sent and sent as a sent as

S. 309 of the Criminal Procedure Code does not extend the period of imprisonment which may be awarded by a Magistrate under s. 65 of the Penal Code; it only regulates the proceedings of Magistrates, which are limited.—Empress v. Darba, I. L. R., 1 All. 461. [Stuart, C.J., and Pearson, Turner, and Spankie, JJ. Aug. 3, 1877.]

PRISONERS were convicted by a Cantonment Magistrate of an offence (affray) punishable under s. 160 of the Penal Code, and were sentenced to pay a fine of Rs. 25 each, or in default to be rigorously imprisoned for 30 days. An offence under s. 160 being punishable with imprisonment for one month, or with fine to the extent of Rs. 100, or with both, the Sessions Judge, while referring the proceedings of the Cantonment Magistrate to the High Court, submitted that the Magistrate was not authorized in awarding imprinament, in default of payment of fine, for a period exceeding one-fourth of one month. The High Court, after giving careful consideration to the provisions of s. 309 of the Code of Criminal Procedure (Act X. of 1872), are of opinion that the sentence of the Cantonment Magistrate is not illegal. The final clause of s. 309 enacts that, where a person is sentenced to fine only, the Magistrate may award such term of imprisonment in default of payment of fine as is allowed by law, provided the amount does not exceed the, Magistrate's powers under the Act. It appears to the High Court that the proper construction of this clause is as follows: If imprisonment and fine, and further imprisonment in default of payment of fine, is the sentence, the imprisonment in default cannot exceed

one-fourth of the period of imprisonment which the Magistrate is competent to inflict for the offence; but if the sentence is fine only, the imprisonment in default of payment may be the whole period of imprisonment which the Magistrate is competent to inflict for the offence."—Reg. v. Mahammad Saib, I. L. R., i Mad. 277. [Innes, Offg. C.J., and Kindersley, Busteed, and Tarrant, JJ. Sep. 4, 1877.] But see the following ruling:

S. 33 of the Code of Criminal Procedure, 1882, does not authorize a Magistrate to pass a sentence in default of payment of fine in excess of the term prescribed by s. 65 of the Penal Code. Reg. v. Mahammad Saib (I. L. R., 1 Mad. 277) was overruled in 1881.—
QUEEN EMPRESS v. VENKATESAGADU, I. L. R., 10 Mad. 165. [Collins, C.J., and Kernan, Muttusami Ayyar, Brandt, and Parker, JJ. Jan. 18, 1887.]

Muttusami Ayyar, Brandt, and Parker, JJ. Jan. 18, 1887.]

68. The imprisonment which the Court imposes in default of paymant.

Description of imprisonment of a fine may be of any description to which the

Description of imprisonment for such default.

of a fine may be of any description to which the offence offender might have been sentenced for the offence.

87. If the offence be punishable with fine only, "the imprisonment which

Imprisonment for non-payment of fine when offence punishable with fine only.

payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

WHERE an offence is punishable with both fine and imprisonment, or with fine-only, and the Magistrate fines only, but awards imprisonment in default of payment, the term of imprisonment is regulated by s. 67, and not s. 65.—In the Matter of Chunder Personal Singh, 10 W. R. 30. [Loch and Glover, J]. Aug. 24, 1868.]

In cases of simple imprisonment ordered as a process for enforcement of payment of

In cases of simple imprisonment ordered as a process for enforcement of payment of fine, the rule of s. 262 of the Criminal Procedure Code limiting the period of imprisonment in summary trials does not apply, as that section only refers to substantive sontences of imprisonment.—Empress v. Asghar Ali, I. L. R., 6 All. 61. [Tyrrell, J. Aug. 13, 1883.]

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or payment of fine.

Termination of such imprisonment such a proportional part of the fine still unpaid, the imprisonment shall terminate.

Termination of such imprisonment, such a proportion of the fine be paid or payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than preportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration.

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

^{*} The words quoted have been inserted by Act VIII. of 1882, s. 3.

Ruling.

A PRISONER was sentenced to imprisonment and fine, and, in default of payment of the latter, to a further term of imprisonment. He paid a portion of the fine, but that fact not having been communicated to the jailor, he underwent the entire further term of imprinonment. Held that, under these circumstances, the Court had no power to order the fine to be refunded.—REG. v. NATHA MULA, 4 Bom. H. C. R. 37. [Couch, C.J., and Newton, J. Oct. 9, 1867.]

70. The fine, or any part thereof which remains unpaid, may be levied Fine leviable within six years, of during imprisonment. at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period; and the death Death not to discharge property from liability. of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

In every case in which an offender is sentenced to fine, the Court which sentences the offender may issue a warrant for the levy of the amount by distress and sale. The successor in office of a Judge or Magistrate may levy a fine imposed by his predecessor. But the Court which levies the fine must be the same as the Court which imposed it. CHUNDER COOMAR MITTRA v. Modhoosoodun Dev, 9 W. R. 50. [Peacock, C.]., and Jackson, Phear, Macpherson, and Mitter, JJ. Mar. 20, 1868.]

On a reference as to whether the restriction for the recovery of fines to moveable property (Criminal Procedure Code, see) applied only during the lifetime of the offender, and whether the fine could, after his death, be recovered, under s. 70 of the Penal Code, from his immoveable property the Court of the court of the Penal Code, from his immoveable property, the Court was of opinion that the law had only provided for the distress and sale of moveable property, and that there was no way in which im-moveable property could be made liable.—Reg. v. Lallu Karwar, 5 Bom. H. C. R. 63. [Newton and Tucker,]]. July 30, 1868.]

WHERE a person has undergone imprisonment in default of payment of fine, he is not thereby exonerated from paying the fine (5 R. J. P. J. 37). This ruling is in accordance with the principle laid down by the Law Commissioners, who say: "We do not mean that this imprisonment shall be taken in full satisfaction of the fine; we cannot consent to permit the offender to choose whether he will suffer in his person or his property The imprisonment which an offender has undergone shall not release him from the pecuniary obligation under which he lies. His person will, indeed, cease to be answerable for the fine; but his property will, for a time, continue to be so.'

WHERE a person was fined under the Penal Code, and died before the fine was paid, and the Magistrate ordered the fine to be realized by sale of his joint moveable property; and, that being found insufficient to cover the fine, his immoveable property was also attached under the order, held that the liability of the immoveable property of the deceased could not be enforced by distress. Reg. v. Lallu Karwar (5 Bom. H. C. R. 63) followed. S. 386 of the Criminal Procedure Code is not applicable to such a case.—Queen-Empress 7. SITA NATH MITRA, I. L. R., 20 Cal. 478. [Pigot and Hill, J]. Oct. 24, 1892.]

- 71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall Limit of punishment of wifence made up of several not be punished with the punishment of more than offences. one of such his offences, unless it be so expressly provided.
- "Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or
- where several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence,

[P. C. 5.] Digitized by Goog "the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

Illustrations.

(a.) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, has might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b.) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here as the blow given to Y is no part of the act whereby A voluntarily causes but to Z, a is liable to one punishment for voluntarily causing hurt to Z, and another for the given to Y.

Rulings.

S. 71 of the Penal Code applies to the case of a person charged with "house-breaking" under s. 457, and "theft" committed on the same occasion under s. 380 of the Penal Code. A Magistrate has power to inflict only two years' imprisonment for single offence.—Reg. v. Arjun, 1 Bom. H. C. R. 87. [Forbes and Westropp, J]. Nov. 4, 1863.]

THERE cannot be a conviction both of "rioting" and of "being members of an unlawful assembly." The Igreater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. Were both original sentences legal, the appeal would lie to the Sessions Judge.—MERLUN KHALIFA v. DWARKA NATH GOOPTO, I W. R. 7. [Kemp and Glover, J]. Aug. 17, 1864.]

A PERSON convicted of robbery or theft cannot be also convicted of dishonestly receiving in respect of the same property.—Queen v. Sheikh Muddun Ally, 1 W. R. 27- [Kemp and Glover, J]. Nov. 23, 1864.]

The two offences of robbery and of voluntarily causing hurt, when combined, are punishable under s 394 alone, and not under ss. 392 and 394.—QUEEN v. MOOTKEE KORA, 2 W. R. I. [Kemp and Glover, JJ. Jan. 2, 1865.]

The prisoner entered a house for the purpose of committing an assault, and, in carrying out that intention, caused grievous hurt. In convicting and punishing him for the substantive offence (grievous hurt), held that it was not necessary to pass a separate sentence for the offence of house-trespass.—QUBEN v. Bassoo Rannah, 2 W. R: 29. [Kemp and Glover, J]. Jan. 30, 1865.]

S. 3, Act VI. of 1864, does not allow of whipping in addition to imprisonment in the case of a fresh conviction. House-breaking by night and theft form a single and entire offence, and cannot be punished separately.—QUEEN v. TONAOKOCH, 2 W. R. 63. [Jackson and Glover, J]. April 19, 1865.]

THE theft and the taking or retention of stolen goods form one and the same offence, and cannot be punished separately.—QUEEN v. SREEMUNT ADUP, 2 W. B. 63 [Glover, J. April 19, 1865.]

HOUSE-TRESPASS and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly armed with deadly weapons no separate convictions and sentences were deemed to be requisite.—QUEEN v. SURROP NAPIT, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 15, 1885.]

Conviction and sentence, both for rioting and for grievous hurt, upheld, the punishment being, on the whole, not more severe than might properly have been awarded if the conviction had been for grievous hurt only. A person convicted of rioting should not be convicted of hurt or grievous hurt caused to himself.—QUEEN v.Azgur, 5 W. R. 19 Seton-Karr and Macpherson, JJ. Jan. 26, 1866.]

^{*} The clause quoted has been added by A& VIII. of 1882, s. 4.

A PERSON convicted of house-breaking, followed immediately by theft, is punishable only under s. 457 of the Penal Code.—QUEEN v. CHYTUN BOWRA, 5 W. R. 49. [Jackson and Glover, JJ. Mar., 5, 1866.]

A DOUBLE sentence for theft and mischief is illegal and improper.—Bechuk Ahber B. Aubuck Bhooniah, 6 W. R. 5. [Jackson and Campbell, J]. June 18, 1886.]

HELD that it was not illegal to convict prisoners of mischief, as well as of theft, the offences charged being that they had cut down Government trees without leave, and appropriated them.—REG. v. NARAYAN KRISHNA, 2 Bom. H. C. R. 392: [Couch, C.J., and Newton, J. June 27, 1866.]

THE prisoner was convicted by the Magistrate of two separate offences under ss. 456 and 360 of the Penal Code, and sentenced for both. On appeal, the Sessions' Judge, holding that the offence proved was under s. 457, ordered a new trial for offences under sa. 457 and 380. Held that there ought not to be a new trial, but that the conviction and sentence under s. 380 should be set aside —QUEEN v. RAMCHARAN KAIRE, B. L. R., Sup. Vol., 488; 6 W. R. 39. [Peacock, C.J., and Norman, Kemp, Seton-Kar, and Campbell, J]. Jely 9, 1866.]

In a case of separate convictions and sentences for house-breaking by night and theft under ss. 457 and 459 of the Penal Code, the conviction and sentence under s 379 were quashed, and those under s. 457 were upheld.—JOGEEN PULLER v. NOBO PULLER, 6 W. R. 49. [Kemp and Markby, JJ. July 28, 1866.]

THE conviction of prisoners for two offences, when the one offence formed an integral partion of the other, held to be in effect punishing twice for the same offence, and therefore illegral.—GOVERNMENT v. LALAWUN SINGH, I Agra H. C. R. 31. [Turner. J., and Spankle, Offg. J. Nov. 22, 1866.] Followed in Queen v. Mungroo, 6 N.-W. P. 204.

THEFT is the sequel of, and cannot be separated from, house-breaking. A cumulative seatence of three years' imprisonment was held to be illegal in such a case.—Mussalus Daoudh, 6 W. R. 92. [Kemp and Markby, JJ. Dec. 19, 1866.]

withhanding s. 46 of the Code of Criminal Procedure (Act XXV. of 1861), which limit has reference only to sentences passed simultaneously, or passed upon charges tried simultaneously.—QUEEN v. PUBAN, 7 W. R. 1. [Kemp and Markby, JJ. Jan. 3, 1867.]

The prisoner was convicted and sentenced separately for culpable homicide not amounting to murder, and for being a member of an unlawful assembly. The two offences, however, being held to be one (the latter being only part of the evidence of the former), the conviction and sentence for the second offence were quashed.—QUEEN v. RUBBEEOOL-11, 7 W. R. 13. [Norman and Seton-Karr, JJ. Jan. 16, 1867.]

WHERE a girl of 11 years of age was taken out of the custody of her lawful guardianty the first prisoner, and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under s. 363 of the Penal Colomby, and of the latter under s. 368 only, while the separate conviction of both under s. 368 only, while the separate convi

WHERE a man brought a false charge against another, and at the trial gave false cridings in support of the charge, it was held that he was liable to be tried and punished separately on separate charges of bringing a false charge and of giving false evidence.—QUERE & ABDOOL AZEEZ, 7 W. R. 59. [Kemp and Glover, J]. April 27, 1857.]

The offences of rioting armed with deadly weapons, and stabbing a person on whose presents the riot takes place, are distinct offences, and punishable as separate offences as 148, 149, and 324 of the Penal Code, s. 149 being read as a proviso to s. 148.—

Quant 2. Callachand, 7 W. R. 60. [Norman and Seton-Karr, J]. April 29, 1867.]

The evidence of a kidnapped girl, if thoroughly credible, is legally sufficient for a consistion for kidnapping. There is nothing illegal in passing separate sentences for kidnapping, and for selling for purposes of prostitution.—QUEEN v. DOORGA DASS, 7 W. K. K. K. K. K. K. May 18, 1867.]

SEPARATE convictions and sentences under ss. 429 and 379, and under ss. 457 and 190, of the Penal Code, were set aside; and the convictions under s. 429 in the former case

and under s. 457 in the latter, allowed to stand.—QUEEN v. SAMEAE, 8 W. R. 31. Gacks son and Hobbouse, JJ. July 1, 1867.]

THE offence described in s. 363 of the Penal Code is included in that described in s. 369, the kidnapping, and the intention of dishonestly taking property from the kidnapped child, being included in the latter section.—Queen v. Shama Sheikh, 8 W. R. 35. [Kemp and Glover, JJ. July 8, 1867.]

CRIMINAL trespass is a part of the offence of mischief committed upon land as well as of house-breaking by night.—QUEEN v. LALLOO SING, 8 W. R 54. [Jackson and Hobhouse, JJ. July 29, 1867.]

WHERE a person, though charged under two heads, was found guilty of what was substantially but one offence, held that it was improper for the Sessions Judge to record a conviction under two sections of the Penal Code, and thereupon to award a punishment of two years' imprisonment in excess of what the law prescribed for the offence committed.—Reg. v. YORA KARUBEG, 4 Bom. H. C. R. 12. [Couch, C.J., and Newton, J. Sep. 26, 1867.]

HELD by the majority that, when a person who has not been "previously convicted" (vide s. 4, Act VI. of 1864) is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of those offences, in addition to imprisonment or fine for the other or others; but it is not illegal to sentence him to one whipping in lieu of all other punishments. Held further, that, when a person who has been "previously convicted" is convicted at one time of two or more offences, he may be punished with one, but only one, whipping, in addition to any other punishment to which, under s. 46 of the Code of Criminal Procedure, he may be liable.—NASSIR v. CHUNDER, 9 W. R. 41; B. L. R., Sup. Vol., 951. [Peacock, C.J., and Seton-Karr, Jackson, Phear, and Macpherson, J]. Mar. 12, 1868.]

• Where prisoners are charged both with rioting, being armed with deadly weapons, and with causing hurt by shooting, and their conviction of the latter offence rests solely on the fact of their belonging to a party by one of whom (not one of the prisoners) firearms were used, it is wrong to pass a cumulative sentence, and to punish the prisoners both for the rioting and for the causing hurt. The punishment should be for either one or other of those offences. A charge should be so framed as to refer to the segtion of the Penal Code under which the offence charged is punishable, as required by ss. 234 and 237 of the Code of Criminal Procedure. Where there is a riot and fighting between two factions, the members of each party should be committed for trial separately, and not all together.—Queen v. Durzoola, 9 W. R. 33. [Seton-Karr and Macpherson, J]. Mar. 14, 1868.] But see Queen v. Callachand, 7 W. R. 60, supra, p. 27.

THE offences specified in ss. 411 and 414 of the Penal Code cannot be considered as two distinct offences so as to allow of the procedure of s. 46 of the Criminal Procedure Code being adopted.—4 Mad. H. C. R., Ap., 14. [Aug. 12, 1868.]

When a prisoner, convicted of "house-breaking in order to commit theft," and of "theft," both offences being portions of one continuous criminal act, was sentenced, on the first head of charge, to one year's rigorous imprisonment, under s. 457 of the Pelal Code, and on the second head of charge to receive twenty stripes, under s. 2 of the Whipping Act (VI. of 1864), the separate sentences (though not illegal) were disapproved of, as contrary to the spirit and intention of the Whipping Act.—Reg. v. Genu bin Aku, 5 Bom. H. C. R. 83. [Couch, C.J., and Newton, J. Sep. 16, 1868.]

Where the prisoners were charged under s. 148 of the Penal Code of rioting armed with deadly weapons, and also under s. 324 of voluntarily causing hurt by dangerous weapons, they should have been sentenced only under one or other of these sections the charges being, properly speaking, only alternative charges. The High Court refused to interfere with the reception by the Sessions Judge of the uncorroborated evidence of accomplices.—Queen v. Dina Sheikh, 10 W. R. 63; 3 B. L. R. 15 n. [Phear and Hobhouse, JJ. Dec. 15, 1868.]

A DEPUTY Magistrate has no power to convict of theft (s. 380, Penal Code), where the offence charged is lurking house-trespass by night with aggravating circumstances (ss. 458, 459, Penal Code), but must commit on the latter charge.—Puran Teles v. Bhuttoo Done, 9 W. R. 5. [Kemp and Jackson, JJ. Jan. 13, 1869.]

WHERE prisoners are convicted of separate offences, a separate seatence should be passed in each case, with a direction that imprisonment in the second case should commence on the expiration of that in the first, and so on, otherwise it would be impossible, in case of an appeal and a reversal of the conviction in one or more of the separate cases, to determine to what portion of the aggregate imprisonment the prisoners still remained liable.—Pro., Jan. 15, 1869, 4 Mad. H. C. R., Ap., 27.

WHERE, in a case in which a prisoner was convicted of theft and also of receiving stolen property, the sentence passed was really one for theft, the High Court nevertheless refused to allow the conviction for receiving stolen property to remain on the record against the accused, and reversed it.—QUEEN v. SEEB CHUNDER HAREE, 11 W. R. 12. [] ackson and Hobhouse, J.J. Mar. 1, 1869.]

Where substantially only one offence has been committed, the several acts which, taken together, constitute that offence, cannot legally be treated as separate offences, and the prisoner cannot legally be sentenced in respect of these as well as in respect of the principal offence.—Queen v. Chunder Kant Lahoree, 12 W. R. 2: S. C. 3 B. L. R., A. C., 14 (where the name of the case is given as Queen v. Kalisankar Sandyal, [Macpherson and Jackson, JJ. June 11, 1869.] But see s. 235 (ill. a) of the Criminal Procedure Code (Act X. of 1882), infra, p. 63.

Held on the facts of this case that a party A, who objected to accompany a constable who had been directed to produce him before the Court, and also seized the constable by the arm, and resisted his carrying away a pony which A was charged with having misapprepriated, was guilty of separate offences under ss. 353 and 183 of the Penal Code, and the infliction of separate sentences for each offence was not prevented by s. 71 of that Code.

—Quren v. Jovah Mohun Chunder, 14 W. R. 19. [Loch and Hobhouse, J]. July 16, 1870.]

A PRISONER cannot be convicted under s. 411 of the Penal Code for dishonestly receiving or retaining stolen property in respect of property which he himself has been convicted, under s. 409, Penal Code, of having obtained possession by committing criminal breach of trust.—Queen v. Shunkur, 2 N.-W. P. 312. [Spankie, J. Aug. 5, 1870.]

THE making of any number of false statements in the same deposition is one aggregate case of giving false evidence. Charges of false evidence cannot be multiplied according to the number of false statements contained in the deposition.—Pro, May 1 1871, 6 Mad. H. C. R., Ap., 27.

Held (Kemp and Phear, J., dissenting) that, notwithstanding s. 46 of the Code of Criminal Procedure (Act XXV. of 1861), a person convicted at the same time of two or more offences punishable under the Penal Code may, in addition to the punishments prescribed by the Penal Code, be sentenced to whipping under Act VI. of 1864. The Penal Code and the Code of Criminal Procedure must be read as if the Whipping Act formed a part of the Penal Code from the date of its enactment, and s. 46 of the Code of Criminal Procedure is applicable to all offences and punishments as prescribed by the Penal Code in its present and amended form.—Moniruddeen Shamadar, 15 W. R. 89;7 B. L. R. 165. [Norman, Offg. C.J., and Loch, Bayley, Kemp, Phear, Macpherson, and Mitter, J]. May 30, 1871.]

Persons found guilty of rioting may, if the circumstances warrant it, be convicted of the several offences of rioting armed with deadly weapons, culpable homicide, and grievous hurt.—Queen v. Hurgobind, 3 N.-W. P. 174. [Turner, J. July 7, 1871.]

It is competent to a Magistrate to pass a separate sentence in respect of each of the two charges, of house-breaking in order to commit theft, and of theft in a human dwelling, of which a prisoner is found guilty, provided the aggregate punishment awarded on the two charges does not exceed the punishment which the case warrants for the greater of the two offences of which the accused has been convicted, and provided, further, such aggregate punishment does not exceed the jurisdiction of the Court passing the sentences.

—Reg. v. Anvarkhan valad Gulkhan, 9 Bom. H. C. R. 172. [Westropp, C.J., and Lloyd and Kemball, JJ. May 23, 1872.]

A DRISONER, tried, convicted, and punished, under s. 369 of the Penal Code, of abducting a child with intent dishonestly to take moveable property, cannot also be punished for the theft of a part of the moveable property which he intended dishonestly to take

through means of the abduction; and the second punishment for theft is, by the property Code of Criminal Procedure, illegal.—IN THE MATTER OF NOUJAN, 7 Mad. H. C. C. 375 Morgan, C.J., and Holloway, J. July 8. 1873.]

Convictions under s. 471 of the Penal Code and s. 474 cannot stand together.—QUEEN v. NUZUR ALI, 6 N.-W. P. 39. [Turner, J. Dec. 6, 1873.]

WHERE an act of restraint or confinement in an attempt to kidnap has been exercise in furtherance of the attempt, and goes to form part of that offence, and is not done wit an intention or object which can be separated from the general intention to kidnap, will constitute an integral part of that offence, and should not form the subject of a sparate conviction and sentence.—QUEEN v. MUNGROO, 6 N.-W. P. 293. [Oldfield, J. Aug 13, 1874.]

FOR purposes of appeal the whole punishment awarded to one person on one trial for several instances of the same offence is to be regarded as one sentence. Semble, the where a person is tried at the same time for several instances of the same offence, it not necessary that more than a single sentence should be passed. But if a separate sentence be passed on each head, held that an appeal brings the aggregate of those sentences as together constituting the punishment awarded in a single trial, within the justisdiction of the Appellate Court.—Reg. v. Gullam Abas, 12 Bom. H. C. R. 147. [West and Pinhey, J]. April 15, 1875.]

IN a case of conviction of house-breaking by night in order to commit theft under s. 457, and theft under s. 380 of the Penal Code, there may be either one sentence for both offences, or separate sentences for each offence, provided that the total punishment awarded does not exceed that which may be given for the graver offence.—REG. S. TUKAYA BIN TAMANA, I. L. R., 1 Bom. 214. [Westropp, C.J., and Kemball, West, and Namabhai Haridas, JJ. Sep. 14, 1875.]

A DOUBLE sentence for theft and mischief is illegal and improper.—Вісник Анвект. Айниск Вноомева, 6 W. R. S. [Jackson and Campbell,]]. June 18, 1876.]

• Where the petitioner was convicted of having assisted in concealing stolen railway-pins in a certain person's house and field with a view to having such innocest person punished as an offender, held that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193 of the Penal Code, and of voluntarily assisting in concealing stolen property under s. 414, Penal Code.—Empress v. Rameshar Rai, I. L. R., I All. 379. [Spankie, J. April 23, 1877.]

No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration, and not to be believed. Therefore, a Magistrate, when he has before him a person charged with having been armed with a deadly weapon while a member of an unlawful assembly, is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon, and so to give himself jurisdiction to try the case summarily, and then by inflicting a sentence of imprisonment not exceeding three months, to deprive the prisoner of his right of appeal.—Empress v. Abbool Karim; and Empress v. Golam Mahomed, l. L. R., 4 Cal. 18; 3 C. L. R. 81. [Ainslie and Broughton, JJ. July, 6, 1878.]

Where a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass, and at the same time committed mischief, held that such person could not, under cl. iii. of s. 454 of Act X. of 1872, receive a punishment more severe than might have been awarded for either of such offences. The provisions of that law do not in such a case prohibit the Court from passing sentence in respect of each offence established.—Empress v. Budh Sing, I. L. R., 2 All. 101. [Turner, J. Jan. 24, 1879.]

RIOTING and causing hurt in the course of such rioting are distinct offences, and each offence is separately punishable.—Empress v. Ram Adhin, I. L. R., 2 All. 139. [Pearsen, J. Feb. 13, 1879.]

WHERE a mother abandoned her child with the Intention of wholly abandoning it; and knowing that such abandonment was likely to cause its death, and the child died in

consequence of the abandonment. held that she could not be convicted and punished under 3, 304 and also under s. 317 of the Penal Code, but s. 304 only.—EMPRESS v. BANNI, I. L. R., 2 All. 349. [Straight, J. Aug. 4, 1879.]

Where, in the course of one and the same transaction, an accused person appears to have committed several acts, directed to one end and object, which together amount to a more serious offence than each of them taken individually by itself would constitute, although for purposes of trial it may be convenient to vary the form of charge and to designate not only the principal, but the subsidiary crimes alleged to have been committed, yet, in the interests of simplicity and convenience, it is best to concentrate the conviction and sentence on the gravest offence proved. Where, therefore, a person who broke into a house by night, and committed theft therein, was charged and tried for offences under ss. 380 and \$57 of the Penal Code, and was convicted of both those offences, and punished for each with agorous imprisonment for eighteen months, the Court convicted him of the offence under s. 457, and sentenced him to rigorous imprisonment for three years, and acquitted him of the offence under s. 380.—Empress v. Ajudhia, I.al. R., 2 All, 644. [Straight, J. Jast. 19, 1880.]

Where a person who is accused of several offences of the same kind is tried for each of such offences separately by a Magistrate, the aggregate punishment which such Magistrate can inflict on him in respect of such offences is not limited to twice the amount which he is, by his ordinary jurisdiction, competent to inflict; but such Magistrate can inflict on him for each offence the punishment which he is, by his ordinary jurisdiction, competent to inflict. A person accused of thest on the 1st August, and of house-breaking by night in order to steal on the 2nd August, both offences involving a stealing from the same person, was charged and tried by a Magistrate of the first class at the same time for such offences, and sentenced to rigorous imprisonment for two years for each of such offences. Held that the joinder of the charges was regular under s. 453 of Act X. of 1872, and the punishment was within the limits prescribed by s. 314. Empress v. Umeda (unreported, decided 18th July 1879), observed on by Straight, J.—In the Matter of Daulatia, I. L. R. 2 All. 305. [Stuart, C.J., and Pearson. Spankie, Oldfield, and Straight, JJ. Mar. 19, 1880.]

UNDER S. 454 of the Criminal Procedure Code (Act X. of 1872), the collective punishment awarded under SS. 147. 148, and 324 of the Penal Code, must not exceed that which may be awarded for the graver offence. Quare.—Whether separate convictions under SS. 147 and 324 of the Penal Code are legal?—In the Matter of the Petition of Jubdur Kazi and Golam Khan. Empress v. Jubdur Kazi and Golam Khan, I. L. R., 6 Cal. 718; 8 C. L. R. 390. [Mitter and Maclean, J]. Feb. 18, 1881.] Contra: Empress v. Dungar Singh, I. L. R., 7 All. 29, infra.

A MEMBER of an unlawful assembly, some members of which have caused grievous, hurt, caenot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt.—Empress v. Ram Partab, I. L. Ra, 6 All. 121. [Straight, J. Dec. 5, 1883.] Dissented from in Queen-Empress v. Dungar Singh, I. L. R., 7 All. 20, infra.

The offences of rioting, of voluntarily causing hurt, and of voluntarily causing grievous hurt—each of the two latter offences being committed against a different personare all distinct offences within the meaning of s. 35 of the Criminal Procedure Code, (Act X. of 1882). Under the first paragraph of s. 235 of the Criminal Procedure Code, a person accused of rioting and of voluntarily causing grievous hurt may be charged with, and tried for, each offence at one trial, and under s. 35 a separate sentence may be passed in respect of each. Queen-Empress v. Ram Partab (I. L. R., 6 All. 121) dissented from.—Queen-Empress v. Dungar Singh, I. L. R., 7 All. 29. [Brodhurst, J. July 22, 1884.]

On the 8th August 1884, a Magistrate of the second class began an inquiry in a case in which several persons were accused of rioting and voluntarily causing grievous hurt. The she 6th September, the powers of a Magistrate of the first class were conferred on the Magistrate by an order of Government, which was communicated to him on the 8th September. On the 9th September, the case for the prosecution having closed, the Magistrate framed charges against each of the accused under ss. 323 and 325 of the Penal Code, recorded the statements of the accused and the evidence for the defence, and, on the 10th September, convicted the accused of all the charges, passing upon each of them, in respect of each charge, sentences which he could pass as a Magistrate of the first class, but could not have passed as a Magistrate of the second class. On appeal, the Sessions Judge, on the ground that the prisoners had committed the offence described in s. 148 of

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the Penal Code, held that the sentences passed by the Magistrate were illegal, as beinconsistent with the provisions of s. 71, paras. 2 and 4; and he accordingly reduced the sentences of imprisonment which the Magistrate had passed to the maximum of imprisonment which impriso ment which the Magistrate could have inflicted under s. 148. Held by the Full Bond (Petheram, C.J., and Brodhurst, J., dissenting) that the sentences passed by the trate were legal. Per Oldfield, Mahmood, and Duthoit, JJ., that, with reference to the terms of s. 39 of the Criminal Procedure Code, a Magistrate of the second class, who has begun a trial as such, and continued it in the same capacity up to the passing of sentence. and who, prior to passing sentence, has been invested with the powers of a Magistrate of the first class, is competent to pass sentence in the case as a Magistrate of the first class. Per Oldfield and Duthoit, JJ., that the provisions of s. 71 of the Penal Code had no application to the case, inasmuch as the offences of causing grievous hurt and hurt formed no part of the offence of rioting. Per Petheram, C.J., that a case must be taken to be tried upon the day the trial commences; that, for all the purposes of the trial, the Magistrate in this case retained the status of a Magistrate of the second class; and that he was, therefore, not competent to pass sentence as a Magistrate of the first class. Also he was, therefore, not competent to pass sentence as a Magistrate of the first class. per Petheram, C.J., that the Judge, in this case, had no power to alter the charges or to frame a new charge in any way. Per Brodhurst, J., that the sentences passed by the Magistrate were, as a whole, illegal; that if he had convicted the accused under s. 148 of the Penal Code, his order would, under the circumstances, have been legal; that a Court of appeal is not competent to alter the finding of a Magistrate, so as to convict an accused person of an offence which the Court of which the order is in appeal was not competent to try; and that a member of an unlawful assembly, some members of which have caused grievous hurt, can be legally punished for the offence of rioting as well as for the offence of causing grievous hurt. Empress v. Dungar Singh (I. L. R., 7 All. 29) referred to. Queen-Empress v. Pershad, I. L. R., 7 All. 414. [Petheram, C.J., and Oldfield, Brodhurst, Mahmood, and Duthoit, JJ. Jan. 17, 1885.]

THE offences of rioting armed with a deadly weapon and voluntarily causing hunt with a dangerous weapon to two persons are distinct offences, and a person charged with such offences can be convicted and sentenced in respect of the rioting and of the thank caused to each of the persons injured. A and B were charged with rioting armed with deadly weapons under s. 148 of the Penal Code; and they were also charged under s. 324, coupled with s. 149, with causing hurt by a dangerous weapon to X; and B was further charged under s. 324 with causing a like hurt to Y; A being also charged under s. 324, coupled with s. 149, in respect of the hurt caused by B to Y. A and B were convicted on all charges, and separate sentences, to take effect in succession, were awarded in respect of each offence charged. The offences under s. 324 were committed during the riot. that the several acts with regard to which the prisoners were charged did not fall within the provisions of s. 71 of the Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that, consequently, under s. 235 of the Criminal Procedure Code, the several sentences passed were strictly legal.—LOKE NATH SIRCAR v. QUEEN-EMPRESS, I. L. R., 11 Cal. 349. [Tottenham and Ghose, JJ. Mar. 6, 1885.] Follows Queen-Empress v. Dungar Singh, I. L. R., 7 All. 29, supra, p. 31. But see (in p. 34) Nilmoney Poddar v. Queen-Empress (I. L. R., 16 Cal. 442), which overrules Loke Nath Sircar v. Queen Empress.

WHERE the accused, who was a head-constable, was found guilty of making a false charge under s. 211, and of giving false evidence under s. 193 of the Penal Code, and the Sessions Judge passed sentences of three months' simple imprisonment for each offence, and, taking into consideration the accused's past conduct, directed that the sentences should run concurrently, held that the sentences were inadequate and illegal. Accordingly the sentences were enhanced to three months' rigorous imprisonment for each offence; and as the two offences were distinct, the High Court directed, under s. 35 of the Criminal Procedure Code (Act X. of 1882), one sentence to commence after the expiration of the other. Queen v. Abdool Asees (7 W. R. 59) followed.—Queen-Empress v. Pir Mahomed, I. B. R., 10 Bom. 254. [Birdwood and Jardine, JJ. Dec. 10, 1885.]

FOUR persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court pean, who went with a warrant for his arrest accompanied by other persons, A and B; for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon, and

another by means of a dangerous weapon on A. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section, and two months' rigorous imprisonment under the latter. He further convicted one of the accused of an offence under s. 324 in respect of the assault on A, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry of the other. Held that the offence of rioting was completed by the assault on A, and that the assault on the peon was a further offence under the first subsection of s. 235 of the Code of Criminal Procedure. Held further that, even if A had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were legal, inasmuch as the acts of the accused, taken separately, constituted offences under ss. 143 and 353 of the Penal Code, and combined an offence under s. 147; and under s. 235, sub-s. 3, of the Code of Criminal Procedure, the accused might be charged with, and tried at one trial for, the offence under s. 147, and those under ss. 143 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code as amended by s. 4 of AS VIII. of 1882, which limit had not been exceeded in the present case.—In the MATTER OF CHANDRA KANT BHATTACHARJEE; CHANDRA KANT BHATTACHARJEE v. Queen-Empress, I. L. R., 12 Cal. 495. [Mitter and Beverley, JJ. Dec. 11, 1885.]

THE accused was convicted at one trial by a Magistrate of the first class of the offences of house-breaking by night with intent to commit theft, punishable under s. 457, and of theft in a dwelling-house, punishable under s. 380 of the Penal Code (AC XLV. of 1860), the two offences being part of the same transaction, the theft following the housebreaking. The prisoner was sentenced to two years' rigorous imprisonment under s. 457, and to six months' rigorous imprisonment and a fine of Rs. 100, or, in default of payment, three months' further rigorous imprisonment, under s. 380. The District Magistrate referred the case to the High Court, on the ground that the aggregate of punishment award. ed on the two heads of charge exceeded the powers of the First-class Magistrate who tried the case. The Sessions Judge, to whom an appeal had been preferred, was of the same opinion, and reduced the sentence to two years' rigorous imprisonment. Held that, as the accused committed two distinct offences which did not "constitute, when combined, a different offence," punishable under any section of the Penal Code (Act XLV. of 1860), s. 71 of the Code did not apply; and as the aggregate punishment did not exceed twice the amount of punishment which the trying Magistrate was competent to inflict, the sentences were legal under s. 35 of the Criminal Procedure Code (Act X. of 1882). Pér Jardine, J.—The rules for assessment of punishment, contained in s. 454 of the Criminal Procedure Code of 1872, having been omitted in s. 235 of the Criminal Procedure Code of 1882, must now be sought for in s. 71 of the Penal Code (Act XLV. of 1860) and in s. 35 of the Criminal Procedure Code (Act X. of 1882).—QUEEN-EMPRESS v. SAKHAKAM BHAU, I. L. R., 10 Bom. 493. [Birdwood and Jardine, JJ. Feb. 1886.]

S. 149 of the Penal Code creates no offence, but was intended to make it clear that an accused person whose case falls within its term cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object. In prosecution of the common object of an unlawful assembly, M, with his own hand, caused grievous hurt. M and other members of the assembly, as to whom it did not appear whether or not any of them personally used force or violence, were convicted of rioting under s. 147, and grievous hurt under s. 325 of the Penal Code, and were each sentenced to separate terms of imprisonment for each offence. The highest aggregate punishment, which was M's, was six years' rigorous imprisonment, being one year for rioting and five years for causing grievous hurt. Held that, assuming s. 71 of the Penal Code to be applicable, the sentences were not illegal, as the combined periods of imprisonment did not, in the case of any prisoner, exceed the maximum punishment of seven years' rigorous imprisonment which could have been awarded for the offence punishable under s. 325. Held also that the riot could not, in any of the cases, be considered a part of the offence under s. 325, that s. 71 did not apply, and that the entences were legal. Queen-Empress v. Ram Partab (I. L. R., 6 All. 121) dissented from. Queen-Empress v. Dungar Singh (I. L. R., 7 All. 29), Queen-Empress v. Ram Sarup (I. L. R., 7 All. 767), Queen v. Rubbee-vollah (7 W. R., Cr. 13), Loke Nath Sircar v. Queen-Empress (I. L. R., 11 Cal. 349), Queen-Empress v. Pershad (I. L. R., 7 All. 414), Chundra Kant Bhattacharjee v. Queen-Empress v. Pershad (I. L. R., 7 All. 414), Chundra Kant Bhattacharjee v. Queen-Empress v. L. R., 12 Cal. 490),

and Reg. v. Tukaya bin Tamana (l. L. R., 1. Bom. 214) referred to.—Queen-EmpRess v. BISHESHAR, I. L. R., 9 All. 645. [Edge, C.J., and Brodhurst, J. May 16, 1887.]

Where more than one offence is proved in respect of which the accused has been charged and tried, a conviction for each such offence must follow, whether s. 71 of the Penal Code applies to the case or not; and, subject to the provisions of s. 71, a separate sentence must be passed in respect of each such conviction. Under s. 35 of the Criminal Procedure Code, sentences of imprisonment cannot be passed so as to run concurrently. In a trial for offences under ss. 170 and 383 of the Penal Code, committed in 'the same transaction, it appeared that, but for personating a public servant, the accused would not have been in a position to commit the act of extortion complained of. Held that the first and second paragraphs of s. 71 of the Penal Code did not apply to the case; that the third paragraph also did not apply, because the words "constitute an offence 'wefer to the definitions of offences contained in the Code, irrespective of the evidence whereby the acts complained of are proved, and personating a public servant as defined in s. 170 was got a constituent element of extortion as defined in s. 383; that in the present case the former offence were therefore not illegal —Queen-Empress v. Wazir Jan, l. L. R., 10 All. 58. [Mahmood, J. Sep. 16, 1887.]

An accused person was convicted under s. 457 of the Penal Code of house-breaking by night in order to commit an offence (mischief and assault), and also under ss. 426 and 352 for the offences of mischief and assault, and punished separately for each offence. These offences formed parts of one transaction. Held that the sentences were legal.—QUEEN-EMPRESS v. NIRICHAN, I. L. R., 12 Mad. 36. [Kernan and Muttusami Ayyar,]]. April 17, 1888.]

SEPARATE sentences passed upon persons for the offences of rioting and grievous hurt are not legal where it is found that such persons individually did not commit any act which amounted to voluntarily causing hurt, but were guilty of that offence under s. 149 of the Penal Code. Empress v. Ram Partab (I. L. R., 6 All. 121) approved. Love Nath Sircar v. Queen-Empress (I. L. R., 11 Cal. 349) overruled.—NILMONEY PODDAR v. Queen-Empress, I. L. R., 16 Cal. 442. [Petheram, C.J., and Mitter, Prinsep, Wilson, and Tottenham, JJ. Mar. 21, 1889.]

EIGHT persons, who were charged with a number of others, were tried on various charges consisting of rioting armed with deadly weapons (s. 148, Penal Code), assaulting or obstructing a public servant when suppressing a riot (s. 152), and voluntarily causing hurt and grievous hurt to deter a public servant from his duty (ss. 332 and 333). common object set out in the charge was "to resist the execution of a decree obtained by Suresh Chunder Deb against Shaik Ali Yar in the Court of the Second Subordinate Judge of Alipore, dated 30th April 1891, and also by means of criminal force, or show of criminal force, to overawe the members of the police-force in the execution of their lawful powers as police-officers," and it was held that resistance to the police was one of the component parts of the offence of rioting charged. At the trial in the Court of Session all eight accused were convicted of the offence charged under s. 148, and each was sentenced to the maximum punishment allowed under that section, vis., three years' rigorous imprisonment. Seven out of the eight were convicted of offences under s. 152, and sentenced each toean additional term of two years' rigorous imprisonment for those offences. Two out of the seven accused were further convicted of offences under s. 332 of the Penal Code, the hurt therein charged being caused to police-officers engaged in suppressing the riot, and each sentenced to a further additional term of two years' rigorous imprisonment for that The eighth accused, who was not convicted of an offence under s. 152, was convicted of an offence under s. 333, the grievous hurt being similarly caused to a policeofficer, and for that offence was sentenced to five years' rigorous imprisonment in addition to the sentence of three years passed on him under s. 148. It was contended on appeal (1) that the sentences passed under s. 152 in addition to those under s. 148 were ille gal; (2) that separate sentences under s. 152 and ss. 332 and 333 were illegal; (3) that the cumulative sentences under s. 148 and ss. 332 and 333 were illegal in so far as they exceeded the maximum sentence provided for either of the offences. Held, as regards (1), that as resistance to the police was one of the component parts of the offence of rioting of which the accused were convicted and sentenced to the maximum punishment provided by s. 148, and having regard to the provisions of s. 71, the additional sentences under s. 152 were illegal. Held further, that s. 152 contemplates an assault or obstruction to some particular public servant, and that as the charge against the accused

in finished was merely to the effect that they assaulted and obstructed members of the police for in the discharge of their duties, &c., the conviction under that section could not be spheld. Held as regards (2), that separate sentences under s. 152 and ss. 332 and 333 have illegal, as the hurt inflicted on the police-officers was the violence used towards them the constituted the essence of the offence under s. 152. Held as regards (3), that the influence sentences passed under s. 148 and ss. 332 and 333 were not illegal, there being things in s. 71 of the Penal Code which limits the amount of punishment that may be insected for these offences.—Ferasat v. Queen-Empress, I. L. R., 19 Cal. 105. [Beverley in Ameer Ali, J]. Nov. 9, 1891.]

WHEN a prisoner is convicted of rioting and of hurt, and the conviction for hurt preds upon the application of s. 149 of the Penal Code, it is illegal to pass two sentences one for rice, and one for hurt. But in such a case the two sentences would be the total punishment does not exceed the maximum which the Court pass for any one of the offences. When, however, the accused is guilty of rioting the saw found to have himself caused the hurt, he may be punished both for rioting the formula. If such a case the total punishment can legally exceed the maximum which the Court might pass for any one of the offences. Queen-Empress v. Rám Sarup (I. L. R., 7AII, 757) approved.—QUEEN-EMPRESS v. BANA PUNJA, I. L. R., 17 Bom. 260. [Sargent, L.]. Parsons and Telang, J.]. Dec. 19, 1892.]

The following sections of the Criminal Procedure Code should be read with s. 71 of the Penal Code:—

When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is compatible to inflict: such punishments, when consisting of imprisonment or transportation; seatmence the one after the expiration of the other in such order as the Court may bear.

If shall not be necessary for the Court, by reason only of the aggregate punishment of the several offences being in excess of the punishment which it is competent to inflict a conviction of a single offence, to send the offender for trial before a higher Court:

Maximum term of punishment.

Provided as follows:-

(a) is no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

*(i) if the case is tried by a Magistrate (other than a Magistrate acting under s. 34); **Expressive punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

L-If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

II.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

III.—If several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts.

Mothing contained in this section shall affect the Indian Penal Code, s. 71.

CHAP. HI.

Illustrations

to paragraph I .--

- (a.) A rescues B, a person in lawful custody, and, in so doing, causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and tried for, offences. under ss. 225 and 333 of the Indian Penal Code.
- (b.) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under ss. 454 and 497 of the Indian Penal Code.
- (c.) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under ss. 498 and 497 of the Indian Penal Code.
- (d.) A has in his possession several seals, knowing them to be counterfeit, and intending to use them for the purpose of committing several forgeries, punishable under s. 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under s. 473 of the Indian Penal Code.
- (2.) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under s. 211 of the Indian Penal Code.
- (f.) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under ss. 211 and 194 of the Indian Penal Code.
- (g.) A, with six others, commits the offences of rioting, grievous hurt, and assaulting. a public servant endeavouring, in the discharge of his duty as such, to suppress the riot. A may be separately charged with, and convicted of, offences under ss. 147, 325, and 152 of the Indian Penal Code.
- (h.) A threatens B, C, and D, at the same time, with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under s. 506 of the Indian Penal Code.

The separate charges referred to in illustrations a to h respectively may be tried at the same time.

to paragraph II.-

- (i.) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under ss. 352 and 323 of Indian Penal Code.
- (j.) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under ss. 411 and 414 of the Indian Penal Code.
- (k.) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under ss. 317 and 304 of the Indian Penal Code.
- (1.) A dishonestly uses a forged document as genuine evidence, in order to convict B. a public servant, of an offence under s. 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under ss. 471 (read with s. 466) and 196 of the same Code. to paragraph III .-
- (m.) A commits robbery on B, and, in doing so, voluntarily causes hurt to him. may be separately charged with, and convicted of, offences under ss. 323, 392, and 394 of the Indian Benal Code.
- 396. When a sentence is passed under this Code on an escaped convict, such sentence, if of death, fine, or whipping, shall, subject to the provisions Execution of sentences on eshereinbefore contained, take effect immediately, and, if of imprisonment, penal servitude, or transportation, shall take effect according to the following rules, that is to say:-

"If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude, or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation. - For the purposes of this section-

- (a) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;
- (b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and
- (c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.
- Sentence on offender already sentenced for another offence.

 Sentence on offender already sentenced for another offence.

 Sentenced for another offence.

 or transportation, is sentenced to imprisonment, penal servitude, or transportation, such imprisonment, penal servitude, or transportation, shall commence at the expiration of the imprisonment, penal servitude, or transportation to which he has been previously sentenced:

Provided that, if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately or at the expiration of the imprisonment to which he has been previously sentenced.

- 398. Nothing in s. 396 or s. 297 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.
- 72. In all cases in which judgment is given that a person is guilty of one of several offences, the judgment stating that it is doubtful of which.

 Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

- WITH s. 72 of the Penal Code read the following section of the Criminal Procedure Code (A& X. of 1882);—

236. If a single act, or series of acts, is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be charged in the alternative with having committed some one of the said offences.

Illustration.

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust, or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust, and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

Rulings.

PROOF of contradictory statements on oath or solemn affirmation, without evidence as to which of them is false, is sufficient to justify a conviction, upon an alternative finding, of the offence of giving false evidence, under s. 72 of the Penal Code, and ss. 242, 381, and 382 of the Criminal Procedure Code. The English law upon the subject stated.—
In the Palany Chetty, 4 Mad. H. C. R. 51. [Scotland, C. J., and Collett, J. May 18, 1868.] But see rulings under s. 193.

An accused person was convicted under s. 457 of the Penal Code of house-breaking by night in order to commit an offence (mischief and assault), and also under ss. 456 and 352 for the offences of mischief and assault, and punished separately for each offence. These offences formed parts of one transaction. Held that the sehtences were legal.—Queen-Empress v. Nirichan, I. L. R., 12 Mad. 36. [Kernan and Muttusami Ayyar, J]. April 17, 1888.]

78. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say:—.

A time not exceeding one month if the term of imprisonment shall not exceed six months;

A time not exceeding two months if the term of imprisonment shall exceed six months and "shall not exceed a" year;

A time not exceeding three months if the term of imprisonment shall exceed one year.

IT is not illegal to impose solitary confinement as part of the sentence in a case tried summarily.—EMPRESS v. Annu Khan, I. L. R., 6 All. 83. [Oldfield, J. Sep. 11, 1833.]

74. In executing a sentence of solitary confinement, such confinement shall, in no case, exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days, in any one month, of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

SOLITARY confinement must not be imposed for the whole term of a person's imprisonment. Under s. 74 of the Penal Code it is to be imposed at intervals.—In the Matter of Nyan Suk Mether, 3B. L. R., A. Cr., 49. [Jackson and Mitter, JJ. Aug. 10, 1869.]

WHERE a prisoner was sentenced to imprisonment for a year and a day, during three months of which he was to be kept in solitary confinement, the Madras High Court restricted the solitary confinement to 84 days.—Dec. 15, 1879; SyC. Wein 1st Ed. Sup., and Ed. 15.

Towns 75. Whoever, having been convicted of an offence punishable under thanker XVII or the Code with inc.

Punishment of persons convicted, after a previous conviction, of an offence punishable with three years' imprisonment.

Chapter XII. or Chapter XVII. of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those chapters with imprisonment of either description for a term of three

years or unwards, shall be subject for every such subsequent offence to transportation for life, "or to imprisonment of either description for a term which may extend to ten years."

* The words quoted have been substituted by Act VIII. of 1882, s. 5, for the words "be less than a."

† The words quoted have been substituted by Act X. of 1886, \$. 22, for the words "or to double the amount of punishment to which he would otherwise have been liable for the same; provided that he shall not in any case be liable to imprisonment for a term exceeding ten years."

WHERE the subsequent offence is merely an attempt to com nit an offence punishable under ch. 12 or 17, or an abetment of such an offence, the enhanced punishment cannot be awarded.—Mad. H. C. 1864.

To justify enhanced punishment under s. 75 of the Penal Code on account of previous convictions, both convictions must be of offences punishable under ch. 12 and ch. 17 of the Code, and committed after the Code came into operation.—Queen v. Moluck Chund Rhalifa, 3 W. R. 17. [Jackson and Glover,]]. May 22, 1865.]

RECORDS of previous convictions should not be put in until the close of the trial, as they can only be used after conviction in determining the measure of punishment.—QUEEN v. Shiboo Mundle, 3 W. R. 38. [Glover, J. June 29, 1865] Overruled by Queen-Empress v. Kartick Chunder Dass, I. L. R., 14 Cal. 727.

S. 75 of the Penal Code only applies to convictions of offences committed after the Code came into operation.—QUEEN v. HURPAUL, 4 W. R. 9. [Kemp, Campbell, and Glover, 9]. Sep. 12, 1865.]

In order to legalize whipping in addition to imprisonment in the case of a second conviction, the offence must be the same in both cases.—QUEEN v. AMARUT SHEIK, 4 W. R. 20. [Glover,]. Oct. 28, 1865.]

WHERE a previous conviction takes place before the Penal Code came into operation, such conviction cannot be taken into account in awarding enhanced punishment under s. 75. The previous conviction must be after the Penal Code came into operation.—Reg. 7. Pebun, 5 W. R. 66 (April 14, 1866). The following important remarks were made by Seton-Karr and Glover, JJ., in delivering judgment in the above case: "The meaning of the law appears to us to be that, when an offender, after having been punished with imprisonment for a crime under ch. 17, again, after his release from prison, commits a similar description of crime, or a crime punishable under the same chapter, he is liable, under s. 73, to enhanced punishment, on the ground that the sentence already borne has had no effect in preventing a repetition of his crime, and has been, therefore, insufficient as a warning. But where the prisoner's conviction has taken place a very short time before, and where no imprisonment under it has yet been undergone, and no time has been given for reformation, it cannot be said that a prisoner has had any opportunity of showing what the effect of the first sentence would have been upon him, and it would not be just to punish him as though he were an incorrigible offender, whom no comparatively light sentence could wean from evil courses."

RECORDS of previous convictions should not be put in until the prisoner has been convicted in the case then under trial.—QUEEN v. JEHAN MULLICK, 5 W. R. 67. [Glover, J. April 16, 1866.] Overruled by Queen-Empress v. Kartick Chunder Dass, I. L. R., 14 Cal. 121; but this case has itself been overruled by s. 54 of the Evidence Act as amended by Act III. of 1891, s. 6.

On a reference by a Sessions Judge under s. 434 of the Criminal Procedure Code, a sentence of whipping in addition to one of rigorous imprisonment, in the case of an offence specified is s. 2 of Act VI. of 1864, was annulled, as the offence was not committed after previous conviction.—Reg. v. Surva bin Krishna Mandavkar, 3 Bom. H. C. R. 38. [Couch, C.]., and Newton and Warden, JJ. Dec. 12, 1866.]

To render a former acquittal or conviction a defence on second trial, the offence must, according to s. 55 of the Code of Criminal Procedure (Act XXV. of 1861), be the same offence. The prisoner was charged with having forged pottas A and B, bearing the same date, and adduced in evidence by him in the same suit. No mention of any charge as to potta B was made in the order of commitment; and the prisoner having been acquitted on an indictment for forging potta A, it was held by the majority of the Court (Markby, J., dissenting) that the plea of autrefois acquit was inadmissible on a subsequent trial of the prisoner far forging the potta B.—Queen v. Dwarkanath Dutt, 7 W. R. 15; 2 Ind. Jur., § N. S., 67. [Peacock, C.J., and Kemp and Markby, JJ. Jan. 23, 1867.]

On a reference by a Sessions Judge, under s. 434 of the Criminal Procedure Code, a sentence of whipping in addition to one of rigorous imprisonment, in the case of an offence specified in s. 4 of Act VI. of 1864, was annulled, as the prisoner had not been previously convicted of the same offence.—Reg. v. Babji valad Bapu, 4 Bom. H. C. R. 5. [Couch, C.]., and Newton, J. July 24, 1867.]

A PRISONER, convicted under s. 380 of the Penal Code of theft in a building used for the custody of property, was sentenced, under s. 75, to fourteen years' transportation, as

he had been previously convicted thirteen times of offences now punishable under En. 17, of the Code with imprisonment for three years or upwards. Held that, as all the previous convictions were prior to the passing of the Penal Code, the present offence was not punishable under s. 75.—Reg. v. Kushya bin Yesu, 4 Bom. H. C. R. 11. [Couch, C.J., and Newton, J. Sep. 18, 1867.]

Held by the majority that, when a person who had not been "previously convicted" (vide s. 4, Act VI. of 1864) is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of those offences, in addition to imprisonment or fine for the other or others; but it is not illegal to sentence him to one whipping indice of all other punishments. Held further that, when a person who has been "previously convicted" at one time of two or more offences, he may be punished with one, but only one, whipping, in addition to any other punishment to which, under s. 46 of the Code of Criminal Procedure, he may be liable.—NASSIR v. CHUNDER, 9 W. R. 41; B. L. R., Sup. Vol., 651. [Peacock, C.J., and Seton-Karr, Jackson, Phear, and Macpherson, J.]. Mar. 12, 1868.]

A CHARGE affeging a previous conviction need not show the extent of the former punishment. Revised form of charge.—Pro., April 17, 1868; 4 Mad. H. C. R., Ap., 11.

. Sentence of transportation for fourteen years under s. 392 of the Penal Code annulled, as the offence for which such sentence was passed was not committed subsequently to any conviction, and s. 75 had, therefore, been improperly applied. Semble, that a Sessions Judge cannot (under s. 75 of the Penal Code, or otherwise), by amalgamating a eeatence which he is competent to pass upon a prisoner with a sentence under which such prisoner is already undergoing imprisonment, and commuting the latter sentence, condems such prisoner to a longer period of transportation than he is liable to suffer for the crime of which he has last been convicted.—Reg. v. Sakya valad Kavji, 5 Bom. H. C. R. 36. [Newton, Offg. C. J., and Tucker, J. May 20, 1868.]

A SENTENCE of whipping, founded on a previous conviction of the prisoner, is only warranted where the subsequent conviction is for the same specific offence as that in respect of which the previous conviction applied. A Sessions Judge has no power to suspend a sentence in a case in the absence of appeal.—Pro., Oct. 25, 1869, 5 Mad. H. C. R., Ap., 1.

A SENTENCE of whipping under s 4, Act VI. of 1864, can only be inflicted in addition to other punishment on a second conviction of the offences specified therein, when the first offence was committed some time previous to the second conviction, though after the passing of the Penal Code.—QUEEN v. UDOY PUTNAICK, 12 W. R. 68; 4 B. L. R., A. Cr., 5. [Kemp and Glover, JJ. Oct 28, 1869.]

WHERE a First-class Subordinate Magistrate sentenced a prisoner to six months' rigorous imprisonment under s. 457 of the Penal Code, and, finding that the prisoner was liable to enhanced punishment under s. 75 of the Penal Code, sentenced the prisoner to six months' further imprisonment under s. 46 of the Code of Criminal Procedure, the latter sentence was set aside by the High Court.—Pro., Nov. 2, 1869, 5 Mad. H. C. R., Ap., 3.

Follows the Full Bench decision ruling that, when a person who has been previously convicted (s. 4, Act VI. of 1864) is a second time convicted at one time of two or more offences, he may be punished with only one whipping in addition to any@ther punishment to which under s. 46 of the Code of Criminal Procedure (Act XXV. of 1861), he may be liable.—Rutton Bewa v. Buhur; Jhowla v. Buhur, 14 W. R. 7. [Loch and Hobhouse, J]. June 18, 1870.]

To warrant a sentence awarding additional punishment under s. 75 of the Penal Code as on a second conviction, the evidence that there was a previous conviction against the accused under the Penal Code must be clear and precise.—QUEEN v. NAIMUDDI SHEIKH alias Abbas Sheikh, 14 W. R. 7. [Jackson and Glover, J]. June 25, 1870.]

A PRISONER convicted of "theft in a dwelling-house," who has previously been-conditioned of "simple theft," is not thereby rendered liable to whipping under Act VI. of 1864, s. 3.—Reg. g. Changia valad Shumia, 7 Bom. H. C. R. 68. [Westropp, C J., and Gibbs and Lloyd, J]. Sep. 22, 1870.]

THE Magistrate convicted the accused under s. 380 of the Penal Code, and a preview conviction having been proved under s. 379 of the Penal Code, sentence of imprisonment and whipping was passed. Held that, in order to justify the sentence of whipping, the previous conviction should have been in respect of the same specific offence.—Pro., Oct. 28, 1870, 5 Mad. H. C. R., Ap., 38.

6. 3 of Act VI. of 1864 (the Whipping Act) applies to juvenile as well as to adult offenders. That section does not apply to cases in which the second conviction is for an offence committed previously to the first conviction.—Reg. v. Kusa valad Lakshman, 7 Bofn. H. C. R. 70. [Gibbs and Melvill, JJ. Nov. 17, 1870.]

As a rule, before flogging is given as an additional punishment, there ought to be formal evidence upon the record of the previous convictions relied on. The conviction and identity of the prisoner ought to be proved in the regular way. A mere kaifat is no evidence whatever.—QUEEN v. NUZEE NUSHYO, 15 W. R. 52. [Bayley and Macpherson,]. Agril 21, 1871.]

A MERE kaiftat from the record-office is not sufficient to prove a former conviction against a prisoner. There should be sworn testimony to the fact, and also the identification of the prisoner with the person previously convicted.—QUEEN v. SEIKH RAMJAN, 15 W. Ra53; 6 B. L. R., Ap., 151. [Kemp and Glover, J]. April 22, 1871.]

UNDER S. 470 of the new Criminal Procedure Code, if it is intended to prove a previous conviction against an accused person for the purpose of enhancing the punishment, it is necessary to state the fact of that previous punishment in the charge. If it is omitted, it may be added to the charge at any time previous to the sentence being passed, but not also Queen v. Rajcoomar Bose, 19 W. R. 41. [Kemp and Glover,]]. Mar. 4, 1873.]

S. 75 of the Penal Code is restricted to offences under chs. 12 and 17 of that Code when the term of imprisonment awardable is three years' imprisonment and upwards, and does not refer to an attempt to commit any of those offences; nor can any case be brought within it merely because the punishment that may be given for it extends to three years and upwards.—Queen v. Damu Haree, 21 W. R. 35. [Kemp and Glover, J]. Jan. 26, 1874.]

A SENTENCE of whipping cannot, with reference to Act VI. of 1864, s. 7, be passed on a conviction for theft under s. 379, Penal Code, as the former section only provided for sentences of imprisonment for a term not exceeding three years. The fact of previous-conviction should, under Act X. of 1872, s. 439, be stated in the charge, when it is intended to prove them for the purpose of enhancing punishment. The question of proofs of previous conviction is one of fact which ought to go to the jury, and must be determined by a jury.—Queen v. Esan Chunder Day, 21 W. R. 40. [Jackson and Ainslie, JJ. Feb. 5, 1874.]

UNDER s. 439, Code of Criminal Procedure, a charge of baving committed the offence after a previous conviction therefor should contain an allegation that the offence has been committed after a previous conviction. A statement in a count that at the time when the prisoner committed the offence (no offence being mentioned specially in the count), he had been previously convicted of offences punishable under ch. 17 of the Penal Code is not a sufficient compliance with the provisions of s. 439.—Queen v. Sheikh Jakir, 22 W. R. 39. [Phear and Morris, JJ. July 16, 1874.]

WHERE, soon after his release on expiry of a sentence of seven years' imprisonment on conviction of "receiving stolen property acquired by dacoity," a person is convicted of house-breaking and theft, he is sufficiently punished by a sentence of seven years' transportation. A sentence of transportation for life is too severe. It is not the intention of the Legislature that a previous conviction should so enormously enhance the heinousness of petty offences.—In the Matter of Shamjee Noshyo, 1 C. L. R. 481. [Jackson and Cunningham, J]. Feb. 6, 1878.]

WHERE a person commits an offence punishable under ch. 12 or ch. 17 of the Penal Code punishable with three years' imprisonment, and previously to his being convicted of such offence, commits another such offence punishable under either of such chapters, he is not subjects on being convicted of the second offence, to the enhanced punishment provided in a. 75 of the Penal Code.—EMPRESS v. MEGHA, I. L. R., 1 All. 637. [Turner, J. April 2, 1878.]

In charging the jury upon the trial of a prisoner for being dishonestly is the possession of stolen goods, the Judge directed the jury to consider the proof of previous convictions for theft as evidence from which inference might fairly be drawn as to the character of the accused. Held that this amounted to a misdirection; for though s. 54 of the Evidence Act declares that "the fact that the accused person has been previously convicted of an offence is relevant," yet the same section also declares that "the fact that he has a bad character is irrelevant," and that the evidence was irrelevant and inadmissible. Except

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under very special circumstances, the profer object of using previous convictions to determine the amount of punishment to be awarded should the prisoner be convicted the offence charged.—ROSHUN DOSSADH 7. EMPRESS, I. L. R., 5 Gal. 768; 6 C. L. R. [Morris and Prinsep, J]. Feb. 10, 1880.] See Queen-Empress v. Kartick Chunder Desermines v. Kartick Chunder Desermines v. Kartick Chunder Dass.

If a person who has been convicted of an offence punishable under ch. 12 or ch. 17 of the Penal Code with imprisonment for a term of three years or upwards is convicted of an attempt to commit any such offence, he does not thereby become liable to the enhanced punishment allowed by s. 75 of the Code.—Empress v. Nana Rahim, I. L. R., S. Bom. 140. [Westropp, C.J., and Melvill and Kemball, JJ. Oct. 28, 1880.]

THE provisions of s. 74 of the Bengal Excise Act, as to additional punishment where there has been a "previous conviction for a like offence," contemplate merely the the offender having been already convicted of an offence punishable with a fine of Rs. soo or upwards, and being again convicted of another offence punishable with the same punishment, it is not necessary that he should have been previously convicted of the same The accused were sentenced by the Presidency Magistrate, under ss. 58 and 74 of the Bengal Excise Act, to a fine of Rs. 200 each, in default to three months' imprisons and in addition to six months' imprisonment, which was the maximum term that could be awarded under s. 74. Held that the sentence of imprisonment was not in excess of the powers given to the Magistrate by s. 12 of the Presidency Magistrates Act, the imposition of the additional sentence of imprisonment not affecting the Magistrate's powers as regarded the original sentence under s. 58. No limits with regard to any distilleries in Calcutta having been fixed under s. 9 of the Act within which spirituous liquor manufactured otherwise than in that particular distillery shall be introduced or sold without a special pass, and the fixing of such limits being necessary to a conviction of an offence under s. 48, the convictions in this case were set aside.—RAM CHUNDER SHAW v. EMPRESS, I. L. R., 6 Cal 575; 8 C. L. R. 250. [Morris and Prinsep, JJ. Jan. 5, 1881.]

A PERSON, having been convicted of an offence punishable under s. 457 (ch. 17) of the Penal Code, was subsequently guilty of an attempt to commit such an offence. • Held that the provisions of s. 75 of the Penal Code were not applicable to such person.—EMPRESS • RAM DIAL, I. L. R., 3 All. 773. [Spankie, J. May 6, 1881.]

An accused person can only be punished under s. 75 of the Penal Code where the previous conviction has been under that Code.—BUDHUN RUJWAR v. EMPRESS, 10 C. L. R. 392. [Cunningham and Tottenham, J]. Mar. 13, 1882.]

The object of s. 75 of the Penal Code is to provide for an additional sentence, not a less severe sentence, on a second conviction. Recourse should not be had to that section if the punishment for the offence committed is itself sufficent.—Sheo Saran Tato . Express, I. L. R., 9 Cal. 877. [Prinsep and O'Kinealy, JJ. May 4, 1882.]

The accused, having been previously convicted of offences punishable under ch. 12 of ch. 17 of the Penal Code with imprisonment for a term of three years or upwards, was subsequently convicted of an offence under one of these chapters punishable with imprisonment which may extend to three years, and sentenced to imprisonment for seven years. Held that a sentence of transportation for seven years was illegal. Under s. 75 of the Penal Code the accused might be transported for life, but he could not be imprisoned for a longer period than six years.—Empress v. Mahadu, I. L. R., 6 Bom. 690. [Melvill and Pinhey, JJ. Sep. 7, 1882.]

In trials before a jury or assessors, the record should invariably show that reference to a previous conviction was not made until the accused had been convicted of the subsequent offence.—Kristo Behari Dass v. Empress, 12 C. L. R. 555. [Cunningham and Maclean, J]. Mar. 13, 1883.]

WHERE, in a trial by jury, the Sessions Judge called upon the accused to answer at the same time a charge of theft and also a charge of having been previously convicted, the High Court refused to interfere, it not appearing that a failure of justice had been caused by the irregularity.—BEPIN BEHARY SHAHA v. EMPRESS, 13 C. L. R. 410. [Prinsep and Tottenham, JJ. Aug. 3, 1883.]

If a prisoner is to be tried for an offence punishable under s. 75 of the Penal Code, a separate charge under that section must be framed and recorded.—QUEEN-EMPRESS v. DORASAMI, I. L. R., 9 Mad. 284. [Kernan and Muttusami Ayyar, JJ. April 2, 1886.]

A COURT has no power, under s. 395 of the Criminal Procedure Code, to revise its sentence of whipping by inflicting a fine. In cases where the sentence of whipping cannot be carried out, all that the Court can do is either to remit the whipping altogether, or to sentence the offender, in lieu of such whipping, or of so much of the sentence of whipping awas not carried out, to imprisonment, &c. The word "imprisonment" in s. 395 of the Criminal Procedure Code means a substantive sentence of imprisonment, and not imprisonment for default in payment of a fine.—QUEEN-EMPRESS v. SHEODIN, I. L. R., 11 All. 308. [Straight, J. Jan. 5, 1889.]

A person convicted under ss. 411-75 of the Penal Code is not convicted of "distinct offences" within the meaning of s. 35 of the Criminal Procedure Code. Queen-Empress v. Zor Sing 1-11. L. R., 10 All. 146) explained. Where an offence under s. 411 read with s. 75 of the Penal Code appears to be deserving of a greater punishment than the Magistrate trying it can award, the best course for him to adopt is to commit the accused for trial to the Court of Session.—Queen-Empress v. Khalak, I. L. R., 11 All. 393. [Brodhurst, May 3, 1889.]

The following is the form of a charge of a previous conviction according to the ruling of the Madras High Court, 17th April 1868, 3 Mad. Jur.284: "That he, the said A B, before the committing of the said offence, was convicted, to wit, on the day of in Calendar No. of on the file of , of an offence punishable under chapter xvii. (or xii.) of the Indian Penal Code with imprisonment for a term of three years, to wit, with the offence of , which conviction is still in full force and effect; and that he, the said A B, is thereby liable to enhanced punishment under s. 75 of the Indian Penal Code, and within," &c.

The Calcutta High Court has ruled that "the previous conviction of a prisoner should not have been charged against him: it should have been brought forward by the prosecution after his conviction, and should have been taken into consideration when passing sentence. To enter such a circumstance in a charge would be apt, very improperly, to prejudice the jury trying the case."—I Wyman's Rev., Civ., and Crim. Rep. Cir. 26. The practice, however, is different in England, where previous convictions are always entered on the indictment in cases of felony, so as to allow the prisoner to claim a formal trial on that charge also, if he so desire it; and the count containing the previous conviction is not read to the jury until the prisoner has been convicted of the subsequent offence. In fact, he is not called upon to plead to it until the other is disposed of against him. In accordance with this practice, the Madras High Court has ruled that "the previous conviction should be made a separate head of charge on the trial for the subsequent offence" (Mad. H. C. Rulings, 1864, on s. 75), but that to prevent any injustice to the prisoner, the procedure should be, "first to try the prisoner on the substantive charge then under inquiry, and, if he should be convicted on that charge, to charge him with, and try the fact of, the previous conviction" (Mad. H. C. Rulings, 1865, on s. 75). But see Queen-Empress v. Kartick Chunder Dass (I. L. R., 14 Cal. 721), which has been overruled by s. 54 of the Evidence Act (I. of 1872), as amended by s. 6 of Act III. of 1891.

• In any inquiry, trial, or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force: (\hat{a}) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or (b) in case of a conviction either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted or by production of the warrant of commitment under which the punishment was suffered; together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.—Crim. Pro. Code (Act X. of 1882), s. 511.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date, and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.—Crim. Pro. Code (Act X. of 1882), s. 221, last para.

In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction for any offence, the procedure laid down in ss. 271, 286, 305, 306, and 309, shall be modified as follows:

- (a.) The part of the charge stating the previous conviction shall not be read oft a Court, nor shall the accused be asked whether he has been previously convicted as allege in the charge, unless and until he has either pleaded guilty to, or been convicted of the subsequent offence.
- (b.) If he pleads guilty to, or is convicted of, the subsequent offence, he shall the be asked whether he has been previously convicted as alleged in the charge.
- (c.) If he answers that he has been so previously convicted, the Judge may proceed to pass sentence on him accordingly; but if he denies that he has been so previously con victed, or refuses to, or does not, answer such question, the jury or the Court and the as sessors (as the case may be) shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again—Crim. Pro. Code (Act X. of 1882), s. 180.

• CHARGE FOR THEFT AFTER A PREVIOUS CONVICTION.

le[name and office of Magistrate, &c.], hereby charge you [name of accused person as follows :-

That you, on or about the committed theft, and day of , at thereby committed an offence punishable under s. 379 of the Indian Penal Code and within the cognizance of the Court of Session [or High Court or Magistrate, as the case may is]

And you the said [name of accused] stand further charged that you, before the committing of the said offence, that is to say, on the , had been convicted by day of the [state Court by which conviction was had] at of an offence punishable under Chapter XVII. of the Indian Penal Code with imprisonment for a term of three years that is to say, the offence of house-breaking by night [describe the offence in the ports used in the section under which the accused was convicted], which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under s. 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.—Crim. Pro. Code (Act X. of 9882), Sch. V., Form XXVIII. (iii).

CHAPTER IV.*

GENERAL EXCEPTIONS.

Act done by a person bound, or by mistake of fact believing himself bound, by law.

76. Nothing is an offence which is done by a person who is, or who by season of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be bound by law to do it.

Illustrations.

- (a.) A, a soldier, fires on a mob by the order of his superior officer in conformity with the commands of the law. A has committed no offence.
- (b.) A, an officer of a Court of Justice, being ordered by the Court to arrest Y, and after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

Rulings.

Good faith. - Nothing is said to be done or believed in good faith which is done with out due care and attention.-Penal Code, s. 52.

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^{*} The following chapters of the Penal Code, namely, IV. (General Exceptions), V. (Abetment), and XXIII (Attempts to Commit Offences), shall apply to offences punishable under the said ss. 121A, 294A, and 304A; and the said Chapters IV. and V. shall apply to offences punishable under the said ss. 124A and 225A.—Act XXVII. of 1870, s. 13.

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CHAP. IV.]

GENERAL EXCEPTIONS.

[SECS. 77-79.

'TME fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

—Crim. Pro. Eode (Act X. of 1882), s. 221.

When a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code; of within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.—Evidence Act (I. of 1872), s. 105.

77. Nothing is an offence which is done by a Judge when acting judi-Act of Judge when acting cially in the exercise of any power which is, or which judicially.

cially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

ACCORDING to Act XVIII. of 1850 (an Act for the Protection of Judicial Officers), no Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be lizble to be sued in any Civil Court for any act done, or ordered to be done, by him in the discharge of his judicial duty,* whether or not within the limits of his jurisdiction: Provided that he, at the time, in good faith,† believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court for the execution of any warrant or order which he would be bound to execute, if within the jurisdiction of the person issuing the same.

78. Nothing which is done in pursuance of, or which is warranted by, the judgment or order of a Court of Justice, if done judgment or order of Court. whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith-believes that the Court had such jurisdiction.

When any action or prosecution shall be brought, or any proceedings held against any police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate. Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate; and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary unless the Court shall see reason to doubt its being genuine. Provided always that any remedy which the pagty may have against the authority issuing such warrant shall not be affected by anything contained in this section.—Police Act (V. of 1861), s. 41.

Act done by a person justified, or by mistake of fact believing himself justified, by law.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law, in doing it.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

^{.* 3} Bom. A. C. J. 47.
† See 1 Tayl. and Bell 228n; 6 Mad. H. C. R. 439; 3 Bom. A. C. 46; 4 Ben. A. C.
J. 37.

Rulings.

THE 21st Geo. III., c. 70, s. 24, protecting Provincial Magistrates in India from actions for any wrong or injury done by them in the exercise of their judicial offices, does not confer unlimited protection, but places them on the same footing as those of English Courts of a similar jurisdiction, and only gives them an exemption from liability when acting bond fide in cases in which they have mistakenly acted without jurisdiction. Trespass will not lie against a Judge for acting judicially, but without jurisdiction, unless he knew, or had the means of knowing, of the defect of jurisdiction, and it lies upon the plaintiff, in every such case, to prove that fact.—Calder v. Halket, 2 Moore's I. A. 293. [Lord Brougham, Mr. Baron Parke, Mr. Justice Bosanquet, and the Right Hon. Dr. Lushington. Dec. 5, 1859, and July 4 and 8, 1840]

THE wounding of a thief by a chaukidar in order to his arrest was held ander the circumstances to be justifiable.—QUEEN v. PROTAB CHAUKIDAR, 2 W. R. 9. [Campbell and Glover, JJ. Jan. 46, 1865.]

THE arrest, under civil process, of a judgment-debtor going to a Court in obedience to a citation to give evidence, and made within the precincts of that Court, and with some show of violence and contempt of Court, does not entitle the officers making the arrest to protection under s. 78, Penal Code.—Thacoordoss Nundee v. Shunkur Roy, 3 W. R. 53. [Kemp and Seton-Karr, J]... July 24, 1865.]

A CIVIL Court's bailiff, in executing a process against the moveable property of a judgment-debtor, has no authority to use force and break open a door or gate.—JOHN ANDERSON v. J. McQUBEN, 7 W. R. 12. [Kemp and Glover, J]. Jan. 14, 1867.]

The general exception provided by s. 79 of the Penal Code, and the power confessed by cl. 5, s. 100 of the Code of Criminal Procedure, was held not to protect a police-officer who did not act in good faith, i. e., with due care and attention. Cl. 5, s. 100 of the Criminal Procedure Code, refers to property which is proved to have been stolen, and not to any thing which a police-officer may choose to imagine has been stolen. Where a police-officer refused to let a person go home until he had given bail, he was held to have been guilty of wrongful restraint under s. 339 of the Penal Code.—Sheo Sarun S

The following facts were held to show that a police-officer did not act in good faith, that is, with due care and attention: "He sees a horse tied up, without any attempt at concealment, in Bookoo's premises; and because the animal happens to resemble one which his father had lost a short time previously, he jumps at once to the conclusion that Bookoo has either stolen the horse himself, or has purchased it from the thief; and he compels Bookoo to account for his possession accordingly. He finds that Bookoo bought the animal from one Sheo Sarun Sahai; so he sends for that individual, charges him with the theft, and compels him to give bail for his appearance whilst an investigation is pending. The sub-inspector never sent for the supposed owner of the horse, nor took the trouble of getting any credible information as to whether it was his father's horse or not. Had he done so, he would have found that that horse had already been found in another place; but, without waiting for such information, and without making any further inquiry, he at once held Sheo Sarun to bail as a person suspected of having come by the animal dishonestly. Cl. 4 s. 54 of the Criminal Procedure Code, 1882, refers to property which is proved to have been stolen." Upon the above facts the High Court held that the sub-inspector had not only not acted with due care and attention, but had not exercised any care or attention at all.—Sheo Sarun Sahai v. Mahomed Fazil Khan, 10 W. R. 20. [Loch and Glover, e]]. July 17, 1868.]

THE first defendant, acting as Magistrate, ordered the removal of the plaintiff's house under s. 308 of the Criminal Procedure Code (Act XXV. of 1861) upon the ground that it was a nuisance and obstruction to the public thoroughfare. Held that the house was neither an obstruction nor a nuisance, and that the first defendant had no jurisdiction to direct its removal; but the first defendant having acted in his judicial capacity, and in good faith believed himself at the time to have jurisdiction, a suit for damages could not be maintained against him.—Seshaiyangar v. R. Ragunatha Row, 5 Mad. H. C. Rep. 345. [Scotland, C.J., and Holloway, J. June 20, 1870.]

Suit to recover damages from defendant, Deputy Magistrate of the zillah of Trichinopoly, for a trespass alleged to have been committed in execution of an order made by him

under a 311 of the Criminal Procedure Code (Act XXV. of 1861), directing the demolition of the plaintiff's house as being a nuisance to a public thoroughfare. Defendant denied his liability, alleging in justification of his order that he believed the house to be obstructive to public comfort, and proceeded in accordance with ss. 308, 310, and 311 of the Criminal Procedure Code, and that, having acted in good faith in discharge of his duties as a Magistrate, he was protected by Act XVIII. of 1850. The issues settled were (1) whether the house was an obstruction and nuisance within s. 308 of the Criminal Procedure Code; (2) whether the defendant acted in good faith in the discharge of his public duty in ordering the removal of the house; (3) whether the plaintiff was entitled to the amount of damages The Civil Judge held, upon the first issue, that the defendant had no jurisdiction to order the removal of the house; upon the second issue, that defendant had not acted with due care and attention, but from feelings of personal animosity towards plaintiff, and was, therefore, not protected by Act XVIII. of 1850. Upon the third issue, he assessed the damages at Rs. 500. The defendant appealed, relying mainly upon the objection that no action lay against him, inasmuch as, first, it had not been shown that he acted without jurisdiction in making the order complained of; and, secondly, that, even if he had acted without jurisdiction, he acted believing at the time in good faith that he had jurisdiction, and was, therefore, entitled to the protection given by Act XVIII. of 1850. Held, upon the first point, that an entire absence of jurisdiction upon the first point had been shown. Upon the second point, that the facts of the case furnished no reasonable or probable ground for belief in the existence of jurisdiction by a Magistrate of ordinary qualifications; that the defendant must, therefore, be held not to have entertained that belief in good faith, unless the provisions of the Criminal Procedure Code, under which he acted, admit of the view that he might, not unreasonably, think that it was probably intended to apply to such an annoyance as that complained of; that, however, those provisions were open to such a misunderstanding and misapplication by a Magistrate of ordinary qualifica-eoog, and consequently that the suit should be dismissed.—RAGUNADA RAU ச. NATHAMUNI BATHAMYYANGAR, 6 Mad. H. C. Rep. 423. [Scotland, C.J., and Holloway, J. April 17, May 8, 22, and Nov. 27, 1871.]

A FLAINT against a Judge, averring that the Judge knowingly and maliciously issued in illegal order to the plaintiff's injury, does not disclose a sufficient cause of action against the Judge. It must not only aver that the Judge had no jurisdiction, but also that he had no reasonable and probable cause for supposing that he had jurisdiction.—PRALHAD v. A. C. WATT, 10 Bom. H. C. Rep. 346. [West, J. Aug. 28, 1873.]

THE removal by a Magistrate of an obstruction in the exercise of the powers conferd upon him by Sch. k, cl. 1 of Ben. Act VI. of 1868, is not a judicial act; and the Magistrate is, therefore, not protected by Act XVIII. of 1850 from a suit in the Civil Court to try the question of the right of the person against whom the order was made to restetbe obstruction and for damages.—Chunder Narain Singht. Brojo Bullub Gooie, 18. L. R. 254; 21 W. R. 391. [Couch, C.J., and Jackson and Ainslie, JJ. Mar. 24 1874.]

RAFFATS are not protected by this section for resistance to distraint of crops where the annihilar's people enter upon the crops with the intention of distraining after notice under s. 116, Act X. of 1859.—Reg. v. Kanhai Shahu, 23 W. R. 40. [Glover and litter, J]. Feb. 27, 1875.]

A ZAMINDAR is justified in exercising his right of private distraint of crops, if he has eved the defaulters with written notices under Act X. of 1859, s. 116; and, in such a case, sights who knowingly resist the distraint are not protected by the Penal Code, s. 79. But the zamindar's people enter upon crops with the intention of distraining without notice, he rayat owners are justified in considering such action as trespass. Quarte.—Would be rayat in the latter case be protected by the provisions of the Penal Code, ss. 97 and 39. In preventing the distraint, and confining the men employed to make it.—Queen v. Lamast Shahu, 23 W. R. 40. [Glover and Mitter, JJ. Feb. 27, 1875.]

ACT XVIII. of 1850 is for the protection of judicial officers acting judicially and of ficers acting under their orders. An officer commanding in cantonments, acting bond is in the discharge of his public duty, and under the belief that a person was dangerous reason of insanity, caused him to be arrested, in order that he might be examined by middle officers, and caused him to be detained in his house for that purpose, he not being languages lunatic. The medical officers, while reporting him sane, recommended that is should be placed under the observation of the civil surgeon of the station, for which

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purpose the same officer caused his further detention. The commanding offices, who, under Act XXII. of 1864, s. 11, had control and direction of the police in the cantonness, did not proceed, or intend to proceed, under s. 4 of Act XXXVI.º of 1858. Held that, although his belief might have justified the commanding officer if he had proceeded under the provisions last mentioned, yet he, not having done so, and not having any legal authority for what he had done, was not protected from liability in respect of the short acts.—Sinclair v. Broughton, I. L. R., 9 Cal. 341. [Sir Barnes Peacock, Sir M. E. Smith, Sir R. P. Collier, and Sir J. Mellor, JJ. June 23, 1882.]

A MASJID was used by the members of a sect of Mahomedans called the Hanifis, according to whose tenets the word "amen" should be spoken in a low tone of voice. While the Hanifis were at prayers, R, a Mahomedan of another zect, entered the masjid. and, in the course of the prayers, according to the tenets of his sect, called out "amen" in a loud tone of voice. For this act he was convicted of voluntarily disturbing an assembly engaged in religious worship, an offence punishable under s. 296 of the Penal Code. The Full Bench (Mahmood, J., dissenting) ordered the case to be re-tried, and that, in Te-trying it, the Magistrate should have regard to the following questions, namely: (1) Was there an assembly lawfully engaged in the performance of religious worship? (2) Was such assembly, in fact, disturbed by the accused? (3) Was such disturbance caused by acts and conduct on the part of the accused by which he intended to cause such disturbance, or which acts and conduct, and at the time of such acts and conduct, he knew or believed to be likely to cause such disturbance? Held by Mahmood, J., that the discussion occasioned by the act of the accused having, presumably, taken place during the interval when the prayers were not going on, the assembly was not at that time "engaged in the performance of religious worship," and was not "disturbed" within the meaning of s. 296 of the Penal Code; that, in reference to the terms of s. 39 of the Code, the accused did not disturb the assembly "voluntarily;" that he was justified by the Mahomedan ecclesiastical law in entering the mosque, and joining the congregation in saying the word "amen" loudly if he thought fit, and his conduct fell within the purview of s. 79 of the Penal Code, and was therefore, not an offence under s. 296. Beatty v. Gillbanks (L. R., 9 Q. B. D. 308) referred to. Also per Mahmood, J., that, having regard to the guarantee given by the Legish in s. 24 of Act VI. of 1871 (Bengal Civil Courts Act), that the Mahomedan law shall be administered in all questions regarding "any religious usage or institution," the Court was bound by s. 57 of Act I. of 1872 (Evidence Act) to take judicial notice of the Mahemedan Ecclesiastical Law, and the rules of that law need not be proved by specific evidence.—QUEEN-EMPRESS v. RAMZAN, I. L. R., 7 All. 461. [Petheram, C.J., and Straight, Oldfield, Brodhurst, and Mahmood, JJ. Mar. 7, 1885.]

This chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations. Some limitations relate only to a single provision, or to a very small class of provisions. Thus, the exception in favour of true imputations on character (cl. 470) is an exception which belongs wholly to the law of defamation, and does not affect any other part of the Code. The exception in favour of the conjugal rights of the husband (cl. 350) is an exception which belongs wholly to the law of rape, and does not affect any other part of the Code. Every such exception evidently ought to be appended to the rule which it is intended to modify. But there are other exceptions which are common to all the penal clauses of the Code, or to a great variety of clauses dispersed over many chapters. Such are the exceptions in favour of infants, lunatics, idiots, persons under the influence of delirium; the exceptions in favour of acts done by the direction of the law, of acts done in the exercise of the right of self-defence, of acts done by the consent of the party harmed by them. It would obviously be inconvenient to repeat these exceptions several times in every page. We have, therefore, placed them in a separate chapter, and we have provided that every definition of an offence, every penal provision, and every illustration of a definition or penal provision, shall be construed subject to the provisions contained in that chapter.—P. C. Note B. 15.

No prosecution against any Magistrate, military officer, police-officer, soldier, of volunteer, for any act purporting to be done under this chapter (IX., Unlawful Assemblies), shall be instituted in any Criminal Court, except with the sanction of the Governor-General in Council; and (a) no Magistrate or police-officer acting under this chapter in good faith; (b) no officer acting under s. 131 in good faith; (c) no person doing any act in good faith in compliance with a requisition under s. 128 or s. 130, and (d) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey, shall be deemed to have thereby committed an offence.—Crim. Pro Code (Act X. of 1882), s. 132

- every person who has capacity to understand the law is presumed to have a knowledge of it. And so far is this principle carried that it has been held that a foreigner could not be allowed to show as a justification of his act (though he might in mitigation of punishment) that it was no offence in his own country, and that he was not aware it was considered wrong where he was tried. And, however hardly it may bear in some few cases, it is evident that the rule is a necessary one. If a criminal could get off by pleading ignorance of law, convictions would probably be rare; nor could society exist for a year, if even a sincere belief in the propriety of his conduct could justify any one who chose to murder or steal.—Arch. 19.
- 80. Nothing is an offence which is done by accident or misfortune, and vithout any criminal intention or knowledge, in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution.

Illustration.

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* A is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excuseable and not an offence.

Rulings.

Where a horse ran away with its rider, killing a passer-by, it was held that this was a pure accident, and the rider was not held liable, as he had lost all control over the animal (Holmes v. Mather, L R., 10 Ex. 261); but where two omnibuses were racing, and one ran over a passer-by, it was held that this was not an accident, and that the driver was liable, because he had so urged his horses that he could not stop them afterwards, he having lost the command of them by his own act (1 Russ. 828).

THE caution which the law requires is not the utmost caution that can be used, but such reasonable precaution as is used in similar cases, and has been found by long experience, and in the ordinary course of things, to answer the end.—Alison's Crim. L. 143.

A MAN, having discharged his gun, went out to dine. On his return he took up the gun, and touched the trigger. The gun went off, killing his wife. He was not aware that in his absence the gun had been loaded by some one. He was acquitted.—Alison's Crim. L. 265.

A MAN, having loaded a fowling-piece with small shot, fired it in a field within an easy shot of a high road, which was used by passers-by? One of the shots killed a girl who was passing by. The evidence showed that the shot was really a long one, being above fifty yards, and that it proved fatal owing to one of the shots penetrating the child's eye, while the other shot hardly penetrated the skin. Under the above circumstances it was held that the death was accidental.—Alison's Crim. L. 144.

Act likely to cause harm, but done without criminal intent, and to prevent other harm.

Act likely to cause harm, but done without criminal intent, and to prevent other harm.

Act likely to cause harm, but done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(a). A, the captain of a steam-vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must nevitably run down a boat, B, with 20 or 30 passengers on board, unless he changes the

[P. C. &]

course of his vessel, and that, by changing his course, he must incur risk of remaining down a boat, C, with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C, and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found, as a matter of fact, that the danger which be intended to avoid was such as to excuse him in incurring the risk of running down the

(b.) A in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

Held that a person who placed in his toddy-pots juice of the milk bush, knowing that, if taken by a human being, it would cause injury, and with the intention of the geby detecting an unknown thief who was in the habit of stealing the toddy from suc's pots, and which toddy was drunk by, and caused injury to, certain soldiers who purchased it from an unknown vendor, was rightly convicted, under s. 328 of the Penal Code, of "causing to be taken an unwholesome thing with intent to injure," and that s. 81, which says that, "if an act be done without any criminal intention to cause harm, it is not an offence," did not apply to the case.—REG. v. DHANA DAJI, 5 Bom. H. C. R. 59. [Newton July 23, 1868.] and Tucker, JJ.

THE accused was a sepoy in a Native Infantry regiment. On the occasion of a fire in the city of Ahmednagar, he and the rest of his company turned out to assist in extinguishing it. He, with other sepoys, was stationed by their officer with orders to keep clear a space in front of the burning house, and not to allow any one not in uniform to intrude on that space. The police under the city chief constable were also engaged at the fire; and, on some of them coming round from the rear, they were warned off by the sentries A fracas between the soldiers and the police took place, and the chief constable was kicked by the accused. For this he was charged before the Magistrate, and fined for voluntarily causing hurt under s. 323 of the Penal Code. In evidence it appeared that the police attempted to force the military guard which had been posted as above stated, and * was turther proved that the chief constable was not in uniform, and that the accused did not know who he was. It was not alleged that the kick was unnecessarily violent. Held that the conviction was bad. The Magistrate having found that the chief constable was not in uniform, and that the accused did not know who he was, the kick was justifiable as given in good faith for the purpose of preventing much greater harm under s. 81 of the Penal Code, and as a means of acting up to the military order.—QUEEN-EMPRESS v. BOSTAN, I. L. R., 17 Bom. 626.

THE following are the remarks of the Indian Law Commissioners in connection with the above section: "Nothing is more usual than for thieves to urge distress and hunger as excuses for their thefts. It is certain, indeed, that many thefts are committed from the pressure of distress so severe as to be more terrible than the punishment of theft, and than the disgrace which that punishment brings with it to the mass of mankind. equally certain that when the distress from which a man can relieve himself by theft is more terrible than the evil consequences of theft, those consequences will not deter him from committing theft. Yet it by no means follows that it is irrational to punish him for theft; for though the fear of punishment is not likely to keep any man from theft when he is actually starving, yet it is very likely to keep him from being in a starving state. It is of no effect to counteract the irresistible motive which immediately prompts to theft, but it is of great effect to counteract the motives to that idleness and that profusion which, end in bringing a man to that condition in which no law will keep him from committing theft."

Act of a child under seven years of age.

82. Nothing is an offence which is done by a child under seven years of age.

Act of a child above 7 and under 12, of immature understanding.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that oc-

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[SEC. 84.

La construing s. 83 of the Penal Code, the capacity of doing that which is wrong is not so much to be measured by years as by the strength of the offender's understanding and judgment. The circumstances of a case may disclose such a degree of malice as to justify the application of the maxim malitia supplet wtatem.—QUEEN v. Mussamut Almona, I W. R. 43. [Kemp and Glover, J]. Dec. 14, 1865.]

The fact that a child has been tried for theft and discharged under s. 215 of the Code of Criminal Procedure, 1872, on the ground of want of understanding within the meaning of s. 82 of the Penal Code, is no bar to the conviction of a person charged under s. 411 of the Penal Code with receiving the property alleged to have been stolen.—QUEEN v. KRISHN§, I. L. R., 6 Mad. 373. [Kernan and Muttusami Ayyar, J]. April 24, 1883.]

Upon the above section the Indian Law Commissioners remark as follows: "It would seem from this that maturity of understanding is to be presumed in the case of such a child unless the negative be proved on the defence" But, according to the English law, during this second period, "an infant shall be prima facie deemed to be doli incapax, and presumed to be unacquainted with guilt; yet this presumption will diminish with the dvance of the offender's years, and will depend upon the particular facts and circumstances of his case. The evidence of malice, however, which is to supply age, should be strong and clear beyond all doubt and contradiction."—I Russ. 109.

When any person under the age of 16 years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.—Crim. Pro. Code (Act X. of 1882), s. 397.

If a child more than seven and under 14 (under the Penal Code, under 12) is indicted for a felohy, it will be left to the jury to say whether the offence was committed by him, and, if so, whether at the time of the commission of the offence the prisoner had a guilty knowledge that he or she was doing wrong; and the presumption of law is that a child of that age has not such guilty knowledge, unless the contrary is proved.—Per Littledale, Junia Rex. V. J. Owen, 4 C. V. P. 236. And this maturity of understanding must be affirmatively proved by the prosecution (Reg. V. Vamplew, 3 F. & F. 520), and must, in most cases, be injerted from surrounding circumstances.

84. Nothing is an offence which is done by a person who, at the time of Act of a person of unsound doing it, by reason of unsoundness of mind, is mind.

is doing what is either wrong or contrary to law.

The fact of unsoundness of mind is one which must be clearly and distinctly proved before any jury is justified in returning a verdict under s. 84 of the Penal Code.—QUEEN v. NOBIN CHUNDER BANERJEE, 20 W. R. 70; 13 B. L. R., Ap., 20. [Macpherson and Morris, 1]. Oct. 24, 1873.]

S. 84 of the Penal Code lays down the legal test of responsibility in cases of alleged unsoundness of mind. It is by this test, as distinguished from the medical test, that the criminality of an act is to be determined. The accused killed his two young children with a hatchet. The reason given for the crime was that, while he was laid up with fever, the crying of the children annoyed him. It was alleged that the fever had made him irritable and sensitive to sound, but it did not appear that he was delirious at the time of perpetrating the crime. There was no attempt at concealment, and the accused made a full confession. Held that, as the accused was conscious of the nature of his act, he must be presumed to have been conscious of its criminality. He was, therefore, guilty of murder.—Queen-Empress v. Lakshman Dagdu, I. L. R, 10 Bom 512. [Birdwood and Jardine, JJ. Mar. 4, 1886.]

THE accused stabbed a child (his brother's wife) with a sword, and killed her. He was charged with murder, and a plea of insanity was set up at the trial. No motive could be assigned for his attack on the child, in which he persisted in the presence of other-persons and it appeared that he had been in the habit of treating the child kindly and affectionately. He was suffering from fever and want of food at the time, and the medical

evidence showed it was possible that the act was committed under a sudden attack of homicidal mania. It was in evidence that he had abused some of his relations a short three before, the abuse being probably due to irritability of mind caused by fever. He confessed the crime to the Village Magistrate, and answered questions put to him rationally, but before the committing Magistrate and the Sessions Judge he denied that he had killed the child. He was convicted of murder. Held that as the accused was not proved to have been, by reason of unsoundness of mind, incapable of knowing the nature of his act, or that he was doing what was wrong or contrary to law, the conviction was right. Queen-Empress v. Lakshman Dagdu (I. L. R., 10 Bom. 512) approved.—QUEEN-EMPRESS v. VENKATA-SAMI, I. L. R., 12 Mad. 459.

The accused, who was a habitual ganja smoker, was charged with the muider of his wife and infant son. In his confession he stated that he had killed his wife, because she quarrelled with him, and objected to go to another village, where he apoposed a change of house on account of their poverty. He adhered to this statement when placed for trial before the Court of Session. The Sessions Judge treated this statement as a plea of guilty on the charge of murder, convicted the accused, and sentenced him to death, subject to confirmation by the High Court. Held (per Jardine and Candy, JJ.) that the accused's statement did not amount to a plea of guilty on the charge of murdering his wife. He alleged a sudden provocation: he ought, therefore, to have been put on his trial, in order that the Court might ascertain whether the provocation was grave and sudden enough to prevent the offence from amounting to murder. Held (per Birdwood and Jardine, JJ.) that, unless the accused's habit of smoking ganja had induced in him such a diseased state of mind as to make him incapable of knowing the nature of his act or its criminality, s & of the Indian Penal Code did not apply in his favour. Queen-Empress v. Lakshman Degelus (I. L. R., 10 Bom 512) distinguished —Queen-Empress v. Sakharam valad Ramjt, I. L. R., 14. Bom. 564. [Birdwood, Jardine, and Candy, JJ. Feb. 25, 1890.]

Act of a person incapable of judgment by reason of intoxication, incapable of judgment by reason of intoxication, incapable of the act, or that he is doing that the thing which intoxicated him was administered to him without his knowledge or against his will.

In a case of murder committed in a drunken squabble, it was held that voluntary drunkenness, though it did not palliate any offence, may be taken into account as throwing light upon the question of intention.—Queen v. Ram Sahoy Bhur, W. R., Sp., 24. [Steer and Glover, JJ. April 29, 1864.]

DRUNKENNESS does not, in the eye of the law, make an offence the more heinous, though it is no excuse; and an act which, if committed by a sober man, is an offence, is equally an offence if committed by one when drunk, if the intoxication was voluntarily caused.—Queen v. Zoolkar Khan, 16 W. R. 36; 8 B. L. R., Ap., 21. [Macpherson and Ainslie, JJ. July 31, 1871.]

86. In cases where an act done is not an offence unless done with a paraicular intent or knowledge committed by one who is intoxicated.

Configure requiring a paraicular intent or knowledge committed by one who is intoxicated.

Configure requiring a paraicular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the him was administered to him without his knowledge or against his will.

THE following notes on the above section, taken from Starlingle "Indian Criminal Law and Procedure," will be found useful:—

"By the English law drunkenness is not any excuse for crime (Pearson's Case, 2 Lewin, C. C., 144). Still, by the practice of the Courts in England, it is constantly held that a person who is intoxicated may be incapable of having any intention, and thus the nature of an offence may be considerably reduced, though intoxication does not render him entirely dispunishable for the act he may have committed while under the influence of liquor. Thus, in a case of stabbing, where the prisoner used a deadly weapon, the fact that he was

drunk does not at all alter the nature of the case; but if he had intemperately used an instrument not in its nature a deadly weapon at a time when he was drunk, the fact of his being drunk might induce the jury to less strongly infer a malicious intent in him at the time."—Per Anderson, B., in Rex v. Meakin, 7 C. and P. 297.

"Again, Parke, B., says that, if a man is drunk, this is no excuse for any crime he may commit; but where provocation by a blow has been given to a person who kills another with a weapon which he happens to have in his hand, the drunkenness of the prisoner may be considered on the question whether he was excited by passion or acted from malice, as also it may be on the question whether expressions used by the prisoner manifested a deliberate purpose, or were the idle expression of a drunken man."—Rex v. Thomas, 7 C. and P. 817.

"In a third case — cowder, J., laid it down that, though drunkenness is no excuse for crime, it may be taken into account by the jury when considering the motive or intent of a person acting under its influence."—Reg. v. Gamlen, 1 F. and F. 90.

Where, on a trial of an indictment for an attempt to commit suicide, it appeared that the prisoner was, at the time of the commission of the alleged offence, so drunk that she did not know what she was doing, it was held that this negatived the intent to commit suicide."—Reg. v. Moore, 3 C. and K. 319; 16 Jur. 750.

Act not intended, and not known to be likely to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age,

who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

Act not intended to cause death, is an offence by reason

Act not intended to cause death done by consent in good faith for person's benefit.

done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z with Z's consent. A has committed no offence.

Rulings.

The benefit alfided to in this section must be some physical benefit, that is, the allegation of some disease, or diseased or disorganized condition of some part or member of the body. Thus, if a man, desiring to enter the society of eunuchs, induces another to castrate him, the operator is liable for the consequences of the emasculation. And, in the case of Reg. v. Babbolun Hijrah (5 W. R. 7), it was held that, where a man of full age (over 18 years) voluntarily submitted himself, for the cure of no disease, to emasculation, performed neither by a skilful hand nor in the least dangerous way, and died from the injury, the persons concerned in the act were guilty of culpable homicide, although not only

did they not know that emasculation was unlawful, but believed that a man might cause himself to be emasculated if he pleased.

A KOBIRAJ operated on a man for internal piles by cutting them out with an ordinary The man died from hæmorrhage. The kobiraj was charged, under s. 304A of the Penal Code, with causing death by doing a rash and negligent act. It was contended that inasmuch as the prisoner had performed similar operations on previous occasions, it was not a rash act within the meaning of that section, and that, at all events, he was entitled to the benefit of s. 88 of the Penal Code, as he did the act in good faith, without any intention to cause death, and for the benefit of the patient who had accepted the risk. Held that, as the prisoner was admittedly uneducated in matters of surgery, and having regard to the meaning of "good faith" as defined in s. 52 of the Penal Code, he was not entitled to the benefit of s. 88. Held further that s. 88 did not apply to the case, as it was not shown by the accused, on whom the burden of proving that fact lay, that the deceased knew the risk he was running in consenting to the operation, and he could not, therefore, be said to have accepted the risk. Held also that, under the circumstances, the conviction under s. 304A was a proper one.—Sukaroo Kobiraj v. The Empress, I. L. R., m. Cal. 566. [Tottenham and Ghose, J]. April 30, 1887.]

Act done in good faith for benefit of child or insane per-

son, by or by consent of guardian.

cause, to that person:

Nothing, which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by' consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to

Provisos.

Provided-

First.—That this exception shall not extend to the intentional causing of. death, or to the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of any thing which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly.-- That this exception shall not extend to the abetment of my offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit. without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

Rulings.

Sexual intercourse by a man with a woman without her free consent, i. e.; a consent obtained without putting her in fear of injury, amounts to rape; and the Judge should leave the question to the jury, and not direct them to find that the woman's consent after a considerable struggle renders the charge of rape nugatory.—QUEEN v. AKBAR KAZEE, I W. R. 21. [Kemp and Glover, JJ. Nov. 11, 1864.]

In a case of murder by consent, held that evidence of consent, which would be sufficient in a civil transaction, must be equally sufficient in exculpation of a prisoner's guilt .-QUEEN v. Anunta Rurnagat, 6 W. R. 57. [Kemp and Markby, JJ. Aug. 25, 1866.]

Consent known to be given under fear or misconception.

Consent known to be given consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

If the consent is given by a person who, from unsoundness of mind or Consent of a child or person intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or, unless the contrary appears from the context, if the consent is given by a person who is understand the nature and consequence of that to which he gives his consent; or, unless the contrary appears from the context, if the consent is given by a person who is understand the nature and consequence of that to which he gives his consent; or, unless the contrary appears from the context, if the consent is given by a person who is understand the nature and consequence of that to which he gives his consent; or, unless the contrary appears from the context, if the consent is given by a person who is unable to understand the nature and consequence of that to which he gives his consent; or, unless the contrary appears from the context, if the consent is given by a person who is unable to understand the nature and consequence of that to which he gives his consent; or, unless the contrary appears from the context, if the consent is given by a person who is unable to understand the nature and consequence of that to which he gives his consent.

91. The exceptions in sections 87, 88, and 89, do not extend to acts which are offences independently of any hurm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause, or be intended to cause, to the woman. Therefore it is not an offence "by reason of such harm;" and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for the benefit of a person without conseat.

Act done in good faith for the benefit of a person without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided—

First.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

* Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(a.) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's berefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b)-Z is carried off by a tiger. A fires at the tiger, knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

- (c.) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.
- (d.) A is in a house which is on fire, with Z, a child. People below hold out a header. A drops the child from the house-top, knowing it to be likely that the fall may hill the child, but not intending to kill the child, and intending, in good faith, the child benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89, and 92.

The benefit alluded to in this section must be some physical benefit, that is, the alleviation of some disease, or diseased or disorganized condition of some part or member of the body. Thus, if a man, desiring to enter the society of eunuchs, induces another that castrate him, the operator is liable for the consequences of the emasculation. And is the case of Reg. v. Baboolun Hijrah (5 W. R. 7), it was held that, where a man of fill age (over 18 years) voluntarily submitted himself, for the cure of no disease, to emasculation, performed neither by a skilful hand nor in the least dangerous way, and died from the injury, the persons concerned in the act were guilty of culpable homicide, although not only did they not know that emasculation was unlawful, but believed that a man interecause himself to be emasculated if he pleased.

98. No communication made in good faith is an offence by reason of Communication made in any harm to the person to whom it is made, if it is good faith.

any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he considered live. The patient dies in consequence of the shock. A has committed no offence, then he knew it to be likely that the communication might cause the patient's death.

Act to which a person is compelled by threats.

Act to which a person is compelled by threats.

of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do any thing that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits, and forced by threat of instant death, to do a thing which is an offence by law—for a smith compelled to take his tools, and to force the door of a house for dacoits to enter and plunder it—is entitled to the benefit of this exception.

A PRISONER, in order to obtain the benefit of this section, must show that the act we done under fear of instant death. Therefore, persons giving false evidence under alleged influence of a threat are not protected by this section.—Reg. v. Sonoo, 10 W 48. [Glover, J. Oct. 28, 1868.]

THE accused, who were classers employed in the Revenue Survey Department, charged, under s. 161 of the Indian Penal Code, with taking bribes from the raiya certain villages. The only evidence against the accused was that of persons who either subscribed to the bribes or collected subscription or paid the money to the acc

hely stated that they had offered the bribes, because the classers had threatened to raise he assessment, cut down the hedges, and erect new boundary-marks. As regards this evidence, the trying Magistrate remarked that, even if all the witnesses for the prosecution vere treated as accomplices, it was open to him to convict on their uncorroborated tesimony, as "there was inherent truth in their statements, and circumstances existed which negatived the presumption of a conspiracy, and evidenced signs of truthfulness." The Magistrate was also of opinion that there was a distinction between accomplices who volunteered to assist in the receipt of illegal gratifications and those who assisted undercompulsion: In the opinion of the Magistrate, the witnesses in the present case belonged to the latter class, and there was no reason to disbelieve their evidence. He, therefore, convicted the accused under s. 161 of the Indian Penal Code, and sentenced them to rigorous imprisonment and fine. Held (Scott, J., dissenting) that the convictions were illegal, there being no evidence to corroborate the witnesses for the prosecution, all of whom were accomplices. Held also (Scott, J., dissenting) that there was such error in the consideration by the Magistrate of the evidence as to prejudice the accessed, and such a failure of justice as to justify the Court in revision in setting aside the convictions. Per Curiam.—The limits of the application of the doctrine of necessity as an excuse for ah act otherwise criminal are those prescribed in s. 94 of the Indian Penal Code. Therefore otherwise criminal are those prescribed in s. 94 of the Indian Penal Code. Therefore witnesses, who, in order to avoid pecuniary injury or personal molestation, had offered or given bribes to a public servant, were abettors of the offence of taking an illegal gratification, and their evidence should be treated as that of accomplices. By the law both of India and England the evidence of an accomplice is admissible, and a conviction is not illegal, because it proceeds upon the uncorroborated testimony of an accomplice (s. 133 of the Evidence Act, I. of 1872). But the presumption that an accomplice is unworthy of credit, unless corroborated in material particulars, has become a rule of practice of almost universal application. Per Scott, J.—There may be, however, cases of an exceptional character in which the accomplice's evidence alone convinces a Judge, and, if he acts on that conviction, with the character of the witnesses clearly present in his mind, a Revie sional Court ought not to interfere in the absence of other circumstances showing a want of judicial discretion. Per Jardine, J.—The mere circumstance of a person being present on a lawful occasion does not raise a presumption of that person's complicity in an offence then committed so as to make s. 34 of the Indian Penal Code applicable. Farler, 8 C. and P. 106. Where the Magistrate on that ground did make that presumption against an accused person, and applied the provisions of s. 34, he committed an error in law, and the High Court, as a Court of Revision, might acquit the accused.—QUBEN-EM-

Act causing slight harm.

Act causing slight harm.

Act causes and the cause and the c nary sense and temper would complain of such harm.

THE Law Commissioners, in framing the above section, state: "This section is intended to provide for those cases which, though from the imperfections of language they fall within the letter of the law, are yet not within its spirit, and are all over the world considered by the public, and for the most part dealt with by the tribunals, as innocent. he our definitions are framed, it is theft to dip a pen in another man's ink, mischief to that to incommode him by pressing in getting into a carriage. There are innumerate without performing which men cannot live together in society, acts which all the stantly do and suffer in turn, and which it is desirable that they should do and turn, yet which differ only in degree from crime. That these ought not to be as crime is evident, and we think it far better expressly to except them from the der uses of the Code than to leave it to the Judges to except them in practice.

DAVICTION and sentence by a Magistrate reversed, as the act of which the accused wicted—taking pods (almost valueless) from a tree standing upon Government mand—came within the meaning of s. 95 of the Penal Code, and did not, theregonn to an offence.—Reg. v. Kasya Bin Ravji, 5 Bom. H. C. R. 35. [Newton, L., and Tucker, J. May 20, 1868.]

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GENERAL EXCEPTIONS. service of the right of windle differe

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THE pain caused by a blow across the chest with an umbrella was held to be such a trivial character as to come within the meaning of the Penal Code, s. 95-6 of Bengal v. Sheo Golam Lalla, 24 W. R. 67. [Glover and Mitter, J]. Nov. 22, 1

A, HAVING had certain transactions with B, wrote out a rough account showin indebtedness to B, and signed the total. The paper was not stamped. B after war sented it to A, and demanded payment of the total amount. A paid part only, and altercation tore up the paper. Held that the act of tearing up the paper comme A paid part only,'as the offence of destroying a valuable security, and the harm caused was such that a of ordinary sense and temper would complain of it.—Queen-Empress v. Ramasassen, 12 Mad. 148. [Collins, C.J., and Wilkinson, J. Nov. 15, 20, 1888.]

OF THE RIGHT OF PRIVATE DEFENCE.

Things done in private defence.

96. Nothing is an offence which is done exercise of the right of private defence.

97. Every person has a right, subject

WHERE a person, assisted by a friend, retaliated severely on another, who tree into his house with the object of having intercourse with his wife, he was held to committed no offence, ss. 96 and 104, Penal Code, justifying him in causing any short of death to the trespasser; and his friend was also acquitted as having aided. commit no offence. —QUEEN v. DHAMUN TELI, 20 W. R. 36. [Markby and Birch,]] 16, 1873.]

Right of private defence of the body and of property.

restrictions contained in section 99, to defend First.—His own body, and the body of any other person, against offence affecting the human body;

Secondly.—The property, whether moveable or immoveable, of him of any other person, against any act which is an offence falling under the finition of theft, robbery, mischief, or criminal trespass, or which is an at to commit theft, robbery, mischief, or criminal trespass.

A COMMITS no offence, if, in the exercise of the right of private defence of h perty against B, whom he finds near a hole in A's house, and, on being attacked he strikes a blow at random, and in the dark, with a stick in his hand, where killed. C and D, by assisting A in removing the body of B, cannot be convicted s. 201 of the Penal Code) of having caused evidence to disappear, they having no ledge or belief that an offence had been committed, nor any intention of screen offender.—QUEEN v. PRLKO NUSHYO, 2 W. R. 43. [Kemp and Glover, J]. Mar. 15,

THE following is the judgment of the High Court in a case of exercise of the private defence of property against a thief who was seized in the act of commi burglary in the house of the accused: "In this case the Sessions Judge has cothe prisoner of culpable homicide not amounting to murder, and sentenced him to years' simple imprisonment. It appears that he seized a thief in the act of commit a burglary in his house, and that the thief was found, on the villagers assembling The prisoner says that he struck the thief one blow with a lathi; but the S Judge and the assessors disbelieved this, as the medical officer who examined the (as the Sessions Judge reports) deposed that death resulted from strangulation find, on looking at this report and deposition, that the thief's death was caused by cation; and there seems to be no doubt from the evidence that the act of the prist seizing and holding the thief, whose face was downwards, as he was getting into the caused the suffocation. We are not satisfied that, in exercising his right of priv fence of property against the thief, the prisoner exceeded the provision of the la we therefore acquit the prisoner, and direct his release."—REG. v. KURRIM BUX, 3 [Jackson and Glover, JJ. May 12, 1865.]

WHERE A is in actual peaceable possession of land, B's attempt to recover possession of it by force is an illegal act, which A has a right to resist. If B uses force in c out his attempt. A has a right to oppose force to force, and to inflict upon B such

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cessary to compel him to desist.—Queen v. Sachee alias Sachee Boler, 7 W. R. farkby and Glover, J.J. May 29, 1867.]

HERR the accused, whose property had frequently been stolen, went out with a watch his property, and with the lathi struck a thief, who died from the effects so 109. equent conduct of the accused) that the case did not fall within the 4th exception and that the prisoner was not guilty of culpable homicide not amounting to murwas protected by ss. 97 and 104 of the Penal Code, and had not exceeded the the of private defence of property.—Queen v. Mokee, 12 W. R. 15. [Norman and n, JJ. June 28, 1<u>867</u>.]

HERE A trespassed on the lands of B, whose servants seized and confined A till the ng day, when B gave information to the police, it was held that the conduct of B ervants in confining A could not be supported on the ground that they were exer-be right of private defence of property under ss. 97, 104, and 105 of the Penal Code. RUFOODDIN v. KASSINATH, 13 W. R. 64. [Loch and Hobhouse, JJ. April 23, 1870.]

sup on the facts of the case (and following 7 W. R. 113) that the accused, who peaceable possession of their property, and were attacked while in such posses-d not exceed the right of private defence of property under s. 103, Penal Code.— . GOOROO CHURN CHUNG, 14 W. R. 69; 6 B. L. R., Ap., 9. [Kemp and Glover, **10v. 19**, 1870.]

ZAMINDAR is justified in exercising his right of private distraint of crops, if he has the defaulters with written notices under Act X. of 1859, s. 116; and in such a case who knowingly resist the distraint are not protected by the Penal Code, s. 79. the zamindar's people enter upon crops with the intention of distraining without the raiyat-owners are justified in considering such action as trespass. Quære.the raivats in the latter case be protected by the provisions of the Penal Code, ad 99, in preventing the distraint, and confining the men employed to make it?-. Kanhai Shahu, 23 W. R. 40. [Glover and Mitter, J]. Feb. 27, 1875.]

HERE both parties are armed and prepared to fight, it is immaterial who is the first ck, unless it is shown that the party was acting within the legal limits of the right ate defence.—In the Matter of Kalee Beparee, I C. L. R. 521. [Jackson and hgham, JJ. Mar. 5, 1878.]

DISTURBANCE having been created with reference to the possession of certain churbe Sessions Judge on appeal found that certain persons had unlawfully trespassed pon, and that the accused had been justified in resisting the trespassers by force. sch, however, as he considered the accused had exceeded their right of private deof their property, he convicted them of rioting under s. 148 of the Penal Code. hat, on the findings of the Judge, the conviction could not be supported, inasmuch a findings the persons convicted were not members of an unlawful assembly.—

R MATTER OF KALEE MUNDLE, 10 C. L. R. 278. [Mitter and Maclean JJ. Feb.

Frank the accused had been convicted of riot under s. 148, and of grievous hurt a 201 of the Penal Code, the Sessions Judge on appeal held that the complainants complained been the aggressors, and that the accused had merely exercised the right ate defence; but inasmuch as they had not set up the plea of private defence, he tend it was not competent to him to set aside the conviction. Held that, on the find-the Sessions Judge, the accused were entitled to an acquittal.—IN THE MATTER OF CHURN MOOKERJEE, 11 C. L. R. 232. [Prinsep and O'Kinealy,]]. May 22,

PARTY of persons, consisting of some five peadas and a number of coolies sufficient week to be done, went to a spot on a river flowing through the lands of M for the we set either repairing or erecting a bund across it to cause the water to flow down a set the lands of their master T. The river at the time was almost dry, and the did not go armed ready to fight or use force, and they did not, during the subsequent until the afternoon. At about 4 P.M. a body of men, consisting of about many of them armed with lathis, and headed by the prisoners, who were serof W, which had been seen collecting together during the day, proceeded to the spot,

and about 25 or 30 of them attacked T's men, some five of whom were more or less se verely wounded with the lathis. The occurrence resulted in the conviction of some o M's servants for rioting under s. 147 of the Penal Code. M's people wholly denied an right on the part of T to construct or repair the bund, and had previously denied the ex istence of such right, and refused permission to T to exercise it. It was contended the the assembly of M's people was not an "unlawful assembly;" that the interference by Ti people with the channel of the river justified them in coming to stop the work, and the show and use of force in compelling them to do so. Held that the prisoners had been rightly convicted. Held, further, that, as no right of private defence of property is con ferred by the Penal Code, except as against the perpetrators of offences under the Penal Code, and that as, upon the facts of the case as found, no offence had been committed b T's people, their acts amounting merely to a civil trespass, and that at there was no press ing or immediate necessity of a kind showing that there was not time to have recours to the protection of the public authorities, no question as to the right of private defeat arose in the case. It was further contended that M's people did not assemble to enforce a right or supposed right within the terms of s. 141 of the Penal Code, but to defend right, and that such action did not make the assembly an unlawful one. Held that the were members of an assembly, the common object of which was, by show of criminal force and by criminal force, if necessary, to enforce the right to keep the river channel clear b preventing the construction of the bund, and by demolishing it so far as it was construct ed, and that the case came within s. 141, para. 4. Queen v. Mitto Sing (3 W R., Cr., 41 Shunker Sing v. Burmah Mahto (23 W. R., Cr., 25), and Birjoo Singh v. Khub Lall (1) W.R., Cr,: 66), referred to and commented on.—GANOURI LAL DAS 7. QUEEN-EMPRESS I. L. R., 16 Cal. 206. [Pigot and Macpherson, JJ. Jan. 14, 1889.]

A LANDLORD, who had not tendered to his tenant such a patta as the latter was boun to accept under the Madras Rent Recovery Act, distrained his cattle for arrears of rest the assistance of the police having been procured for the purpose. The tenant, with the assistance of eleven other persons, forcibly obstructed the removal of the cattle, which he already been actually seized and driven for some yards. They were charged with the of fence of rioting, and convicted. Held that the conviction was right.—Queen-Rmfrassi Ramayya, I. L. R., 13 Mad. 148. [Collins, C.J., and Parker, J. Oct. 2, 25, 1389.]

Right of private defence against the act of a person of unsound mind, &c. of any misconception on right of private defence against that act which he would have if the act were that offence.

Illustrations.

- (a.) Z, under the influence of madness, attempts to kill A. Z is guilty of no offend But A has the same right of private defence which he would have if Z were same.
- (b.) A enters by night a house which he is legally entitled to enter. Z, in good fait taking A for a honse-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which e would have if Z were not acting under that misconception.
- Acts against which there is no right of private defence against an act which there is no right of private defence. a public servant acting in good faith under colour of his office, though that at may not be strictly justifiable by law.

Second.—There is no right of private defence against an act which do not reasonably cause the apprehension of death or of grievous hurt, if done, attempted to be done, by the direction of a public servant acting in good fair under colour of his office, though that direction may not be strictly justifiable by law.

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the C committee and offices if the fortible entry of a comhave been herewith by having recontract to the protection of a
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Third.—There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Fourth.—The right of private defence in no case extends to the inflicting Extent, to which the right of more harm than it is necessary to inflict for the purpose of defence.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts. or, if he has authority in writing, unless he produces such authority, if demanded.

THE right of private defence cannot be pleaded by persons who, believing they will be attacked, court the attack.—QUEEN v. NOWABDEE, W. R., Sp., 11. [Steer, J. Feb. 10. 1864.]

HELD by the majority of the Court that the offence committed was murder where the death of a weak half-starved old woman, who was detected stealing, was caused in the exercise of the right of private defence, by the doing of more harm than was necessary for the purpose of sdch defence; Campbell, J., contra, being of opinion that a man who defects a thief stealing his property, and who, acting on the sudden impulse of the moment, inflicts on the thief blows so severe as to be likely to cause death, but which he did not at the time know or feel to be likely to cause death, and which would not necessarily have caused death to a person in ordinary health, but which, owing to abnormal weakness in the deceased not known to him, did cause death, is not guilty of murder, but of culpable-homicide not amounting to murder.—QUEEN v.GOKOOL BOWREE, 5 W. R. 33. [Norman, Campbell, and Phear,]]. Feb. 26, 1866.]

HELD by the majority of the Court (Campbell, J., dissenting) that, when a person wilfully killed another whilst endeavouring to escape after having been detected in the act of house-breaking by night for the purposes of theft, the offence committed was murder, and could not be considered to have been committed in the exercise of the right of private defence either of person or property, nor under grave and sudden provocation.—

QUEEN **DURWAN GEER, 5 W. R. 73; I Ind. Jur. 253. [Jackson, Campbell, and Macpherson, JJ. April 7, 1866.]

In a case of culpable homicide not amounting to murder, it was held that, though the occasion might have been one in which the prisoner was justified in meeting force by force, still, as he inflicted a blow which he must have known was likely to cause death, he had exceeded his right of private defence with reference to cl. 4, s. 99 of the Penal Code.—QUEEN v. Fuzza Meeah alias Fuzza Mahomed, 6 W. R. 89. [Kemp and Markby,]]. Dec. 13, 1886.]

THERE can be no right of private defence, either on one side or the other, in a case of premeditated riot.—QUEEN v. JEOLALL, 7 W. R. 34. [Glover and Kemp, JJ. Feb. 18, 1867.]

An officer, subordinate to an officer in charge of a police-station, who was deputed by the latter to make an inquiry under s. 135 of the Code of Criminal Procedure, attempted, without assearch-warrant, to enter a house in search of property alleged to have been stoken, and was obstructed and resisted. Held (applying s. 00 of the Penal Code) that, even though the police-officer was not strictly justified in searching the house without a warrant, the person obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of his obstruction, as it was not shown that that officer was thing otherwise than in good faith and without malice. A Magistrate acting judicially should not import into the case before him his previous knowledge of the character of the accessed, but should determine his guilt or innocence upon the evidence given in the case.—Reg. v. Vyankatrav Shrinivas, 7 Bom. H. C. R. 50. [Gibbs and Melvill,]]. June 15, 1870.]

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THE right of private defence under s. 103 of the Penal Code is restricted by s. 99 of that Code, and does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence.—QUEEN v. DHUNUNJAI POLY, 14 W. R. 605 [Kemp,]. Nov. 14, 1870.]

THE High Court declined to interfere in four cases of dismissal by the Magistrate and Deputy Magistrate referred by the Judge—the first, because the Judge considered that mere persistence in demand of rent did not amount to trespass, justifying the right of private defence as held by the Magistrate: the second, because the Judge considered that the Magistrate's reasons, vis., (1) want of explanation of the cause of complainant's presence on the spot where the alleged assault was committed; (2) want of explanation of delay in making complaint; and (3) want of material evidence in the shape of the sees, were not sufficient in law to justify a summary dismissal; the third, because the Judge considered that the mere assertion of a claim to land by the accused did not justify the dismissal of the criminal charge as to theft of its produce, and that the Deputy Magistrate should be directed to hold a proper inquiry and dispose of the case after recording evidence; and the fourth, because the Judge considered that delay in making complaint was not of Realf a legal ground for dismissal, particularly where an explanation of the delay is tendered. (1) MAHOMED JAN v. KHADI SHEIKH; (2) HUR NATH DE KHASHKHIL v. JOYGOPAL DE SIRKAR; (3) HURIS CHUNDRA DAS v. BOLAI AUDHICARBE; (4) SHEIK AHMUDDY v. ANUND MOHUN MOZOOMDAR, 16 W. R. 66. [Bayley and Markby, J]. Dec. 13, 1871.]

THE firing of a gun at persons at a distance of twenty-five yards, without a reasonable apprehension of danger, and without any necessity for so doing, is not justifiable by the right of private defence.—QUEEN v. HUSSAINUDDY, 17 W. R. 46. [Couch, C.J., and Ainslie, J. April 5, 1872.]

A SESSIONS Judge, holding a second trial, should not comment on the conduct of a previous trial. It is for those who raise the plea of private defence to prove it. The act charged cannot be denied, and the plea of private defence raised as an alternative. If raised, a full account of the occurrence must be given in evidence.—In the Matter of Jamsheer Sirdar, I C. L. R. 62. [Ainslie and McDonell, J]. June 29, July 24, 1877.]

A HEAD-CONSTABLE, making an investigation into a case of house-breaking and theft, searched the tents of certain gipsies for the stolen property, but discovered nothing. After he had completed the search, the gipsies gave him a certain sum of money, which he accepted, but at the same time, not deeming it sufficient he demanded a further sum from them. They refused to give anything more, on the ground that they were poor, and had no more to give. Thereupon he unlawfully ordered one of them to be bound and taken away. On his subordinates proceeding to execute such order, all the gipsies in the camp, men, women, and children, turned out, some four or five of the men being armed with sticks and stones, and advanced in a threatening manner towards the place such gipsy was being bound, and the head-constable was standing. Before any actual violence was used by the crowd of advancing gipsies, the head-constable fired with a gun at such crowd when it was about five paces from him, and killed one of the gipsies, and, having done so, ran away. Any apprehension that death or grievous hurt would be the consequence of the acts of such crowd would have ceased had he released the gipsy he had unlawfully arrested, and with drawn himself and his subordinates, or had he effected his escape. Held that such headconstable had not a right of private defence against the acts of such gipsies, as those acts did not reasonably cause the apprehension that death or grievous hurt would be their consequence, and such head-constable was guilty of culpable homicide amounting to murder.—Empress v. Abdul Hakim, I. L. R., 3 All. 253. [Pearson and Straight, J]. Oct. 5. 1880.]

A WARRANT issued for the arrest of a debtor under the provisions of s. 251 of the Civil Procedure Code was initialled by the Munsarim of the Court, sealed with the seal of the Court, and delivered to the proper officer for execution. The debtor foreibly resisted the officer, and was tried and convicted, under s. 353 of the Penal Code, for assaulting a public servant in the execution of his duty as such. In revision, it was contended, with reference to the requirements of s. 251 of the Civil Procedure Code, that the warrant of arrest, having been initialled only, was bad, and the officer could not legally execute it, and consequently no offence under s. 353 of the Penal Code had been committed. Held that this contention could not be allowed, and, although it was proper that the person signing a warrant should write his name in full, it could not be said that, because the signature was confined to the initials of the name, it was not the duty of the officer to execute the warrant. Held also.

with reference to s. 99 of the Penal Code, that the act of the accused did not cease to be an offence on the ground that it was done in the exercise of the right of private defence.—QUEEN-EMPRESS TO JANKI PRASAD, I. L. R., 8 All. 293. [Oldfield, J. May 4, 1886.]

In a suit filed in a Mamlatdar's Court under Bom. Act. III. of 1876, the plaintiff obtained a decree against the accused for possession of a certain piece of land. When the Mamlatdar proceeded to execute the decree, he found that there was no land corresponding to the boundaries set forth in the plaint, and that the parties were joint owners, and in joint occupation of the land in dispute. Finding himself unable to execute the decree, the Mamlatdar referred the matter to the Collector for advice. The Collector, on looking into the papers of the case, ordered a surveyor to execute the decree by dividing the land in dispute, and a thing the decree-holder in possession of his share. The surveyor, in attempting to execute the decree, was obstructed by the accused, who was thereupon tried and convicted of the offence of voluntarily obstructing a public servant in the discharge of his public functions, under s. 186 of the Penal Code (Act XLV. of 1860). Held (reversing the conviction) that, as the Collector had no legal authority to issue the order to the surveyor in execution of the Mamlatdar's decree, the surveyor acting under that order was not discharging a public function, and the act of the accused was not an offence against s. 186 of the Penal Code. Held, further, that the Collector's order was so entirely ultra vires as to leave no room for the operation of either the first or the second clause of s. 99 of the Penal Code.—Queen-Empress v. Tulsiram, I. L. R., 13 Bom. 168. [Birdwood and Parsons, J]. May 3, 1888.]

THE third clause of s. 99 of the Indian Penal Code must be read with the first clause of s. 105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

Before such apprehension commences. the owner of the property is not called upon to apply for protection to the public authorities. The apprehension which justifies a recourse to the authorities ought to be based on some information of a definite kind as to the time and place of the danger actually threaten. ed. The accused No. 1 received information one evening that the complainants intended to go on his land on the following day, and uproot the furari seed sown in it. At about 3 o'clock next morning, he was informed that the complainants had entered on his land, and were ploughing up the seed. Thereupon he at once proceeded to the spot, followed by the other accused, and remonstrated with the complainants. The complainants, without paying any attention to his remonstrances, commenced an attack on the accused. In the fight which ensued, both sides received serious injuries, and the leader of the complainants' party was killed. The accused were thereupon charged and convicted, under ss. 304, 114, 325, and 323 of the Indian Penal Code, of culpable homicide not amounting to murder, of voluntarily causing grievous hurt, and of causing hurt. Held reversing the convictions, that, the complainants being the aggressors, the accused had? under the circumstances, the right of private defence, both of person and of property, and that, in the exercise of this right, they did not inflict more harm than was necessary. Held also that the accused were not bound to act on the information received on the previous evening, and seek the protection of the public authorities, as they had no reason to apprehend a night-attack on their property. —QUEEN-EMPRESS v. NARSING PATHABHAI, L. R., 14 Bom. 441. [Birdwood and Jardine, JJ. Jan. 8, 13, 1890.]

When the right of private defence of the body extends, under the restrictions mentioned in the last preceding section to the defence of the body extends to causing death.

to causing death.

cise of the right be of any of the descriptions hereinafter enumerated, namely:—

Firm.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.—Such an assault as may reasonably cause the apprehension that greyous hurt will otherwise be the consequence of such assault;

Thirdly.—An assault with the intention of committing rape;

Fourthly.—An assault with the intention of gratifying unnatural lust;

Fifthly.—An assault with the intention of kidnapping or abducting;

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Sixthly.—An assault with the intention of wrongfully confining a percent under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

A COMMITS no offence, if, in the exercise of the right of private defence of his property against B, whom he finds near a hole in A's house, and, on being attacked by B, strikes a blow at random, and in the dark, with a stick in his hand, whereby B is killed. C and D, by assisting A in removing the body of B, cannot be convicted (under s. sor at the Penal Code) of having caused evidence to disappear, they having no knowledge at belief that an offence had been committed, nor any intention of screening an offence are Queen v. Pelko Nushyo, 2 W. R. 43. [Kemp and Glover, J]

The legal right of private defence of the body and property is not, exceeded by a person who is attacked by another with a spear, and who strikes a blow with a latter, which results in the death of the party attacking; and such right of private defence of the body extends under s. 100 of the Penal Code to the taking of life where grievous hurt is reasonably apprehended.—Queen v. Moizudin, 11 W. R. 40. [Jackson and Markby, JJ. April 29, 1869.]

Held that it was no misdirection on the part of the Judge in not calling the attaction of the jury to cls. 1 and 2 of s. 100 of the Penal Code, when he particularly extend their attention to cl. 6 of that section.—Queen v. Mooktaram Mundle, 17 W. R. 45.

[Kemp and Glover, J]. Mar. 23, 1872.]

The right of private defence of person and property was not allowed to be pleaded in a case where there was no fear of an assault such as is described in the clauses of s. 100 of the Penal Code, and where the prisoners used deadly weapons. (spears), and killed two unarmed persons whom they found ploughing land which the prisoners believed to be theirs.—QUEEN v. GOUR CHAND CHUNG, 18 W. R. 29. [Kemp and Glover, J]. July 18, 1872.]

UNDER the facts of this case, a person was held to have rightly exercised the right of private defence as contemplated in cl. 2, s. 100, and cl. 4, s. 103, Penal Code, though in the exercise of such right he killed one of his aggressors.—QUEEN v. RAM LALL SINGH, 22 W. R. 51. [Jackson and McDonell, JJ. July 30, 1874.]

When such right extends to causing any harm other than death.

last preceding section, the right of private defeace of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

In a case of hurt or grievous hurt, the question should be considered as to who was the aggressor, and whether the offence was committed in the exercise of the right of private defence.—Queen v. Sohun, 2, W. R. 59. [Campbell and Jackson, J]. April 10. 1865.]

DISPUTE between two parties (the Mollahs and Shikdars), in which the Shikdars attacked and killed one of the Mollahs when exercising the right of re-taking their own property; three of the Shikdars being also wounded. The Shikdars were convicted of culpable homicide not amounting to murder and rioting. As to the Mollahs, Loch, J., was of opinion that they were guilty of voluntarily causing grievous hurt; while the majority of the Court held that they were entitled to the protection conferred by s. 101, Penal Code, on those who, while exercising right of private defence, caused their assailants any harm other than death.—Queen v. Tanoo Shikdar, 3.W. R. 47. [Loch, Kemp, and Seton-Karr, J]. July 17, 1865.]

Commencement and continuance of the right of private defence of the body commences as soon as a commencement and continuance of the right of private defence of the body.

The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body committed, and it continues as long as such apprehension of danger to the body continues.

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The prisoner and the deceased met each other at a liquor-shop, and drank together. Iterwards they walked away together, a third person who had been drinking with them allowing them. In the way an altercation took place in respect of the deceased having, a alleged by the prisoner, caused the death of the prisoner's four children by incantations. According to the prisoner's account, the deceased admitted having done so, and ded that he would also bring about the death of the prisoner; in short, that he would ot allow him to leave the jungle alive, but would cause him to be taken and eaten y a tiger. Thereupon the prisoner stated that he killed the deceased with several lows of a heavy lathi. It was held that the prisoner had no reasonable apprehension of larger to himself from the threats of the deceased, whom he killed; and that, therefore, he right of private defence of the body did not arise, and the case was not taken out of the category of maker, by reason of the second exception to s. 300 of the Penal Code.

Queen v. Goradur Bhuyan, 13 W. R. 55; 4 B. L. R., Ap., 101. [Jackson and Bover, J.]. April 6, 1870.]

When the right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer if the offence, the committing of which, or the utempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:

First.-Robbery;

Secondly .- House-breaking by night;

Thirdly.—Mischief by fire committed on any building, tent, or vessel, thich building tent or vessel, is used as a human dwelling, or as a place for the custody of property;

Fourthly.—Theft, mischief, or house-trespass, under such circumstances is may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

In an affray respecting land one of the aggressive party was killed. The prisoners, the were exercising the right of private defence of property, were acquitted by the jury of culpable homicide, but convicted of rioting. Held that the prisoners, not being legally milty of culpable homicide, were not legally guilty of any other offence coupled with rioting, and, not being rioters, or members of an unlawful assembly, could claim the benefit of s. rod, Penal Code.—Queen v. Mitto Singh, 3 W. R. 41. [Seton-Karrand Campbell, July 11, 1865.]

In investigating a case of dispute as to land between two parties, a Magistrate found hat one party was in possession; but there being a charge against both parties of rioting under s. 147 of the Penal Code, he punished both parties. The High Court held that Jirushe party in possession were protected by s. 104 of the Penal Code; and the punishment milited on them for maintaining their possession was accordingly remitted.—In the Matter of Toolsee Sing, 2 B. L. R., A. Cr., 16; 10 W. R. 64. [Loch and Glover, JJ. Dec. 11, 1868.]

The right of private defence under s. 103 of the Penal Code is restricted by s. 99 of that Code, and does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence.—Queen v. Dhununjai Poly, 14 W. R. 68. [Kemp, J. Nov. 14, 1876.]

CERTAIN persons made a sudden attack upon the prisoners for the purpose of cutting their crops. The prisoners resisted, and, having no time to complain to the police, inflicted a wound upon one of the assailants with a bamboo, from the effects of which he also wards died. The Sessions Judge convicted the prisoners under ss. 148 and 304. In appeal, the High Court held that the force used, and the injuries inflicted, were not such as to exceed the right of private defence of property, and directed an acquittal.—Queen a Goorgo Churn Chung, 6 B. L. R., Ap., 9; 14 W. R. 69. [Kemp and Glover, JJ. Nov. 19, 1870.]

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UNDER the facts of this case, a person was held to have rightly exercised ther of private defence as contemplated in cl. 2, s. 100, and cl. 4, s. 103, Penal Code, the in the exercise of such right he killed one of his aggressors.—QUEEN v. RAN I SINGH, 22 W. R. 51. [Jackson and McDonell, JJ. July 30, 1874]

A PARTY of persons, consisting of some five peadas, and a number of coolies suffice for the work to be done, went to a spot on a river flowing through the lands of M to purpose of either repairing or erecting a bund across it to cause the water to flow do channel on the lands of their master T. The river at the time was almost dry, and party did not go armed ready to fight or use force, and they did not, during the subseq occurrence, use force. Having arrived at the spot about 10 A.M., they proceeded to at the bund until the afternoon. At about 4 P.M., a body of men, consisting of a 1,200 in all, many of them armed with lathis, and headed by the prisoners, who were vants of M, which had been seen collecting together during the day, proceeded to the and about 25 or 30 of them attacked T's men, some five of whom were more or less verely wounded with the *lathis*. The occurrence resulted in the conviction of some The occurrence resulted in the conviction of sor M's servants for rioting under s. 147 of the Penal Code. M's people wholly desired right on the part of T to construct or repair the bund, and had previously denied the istence of such right, and refused permission to T to exercise it. It was contended the assembly of M's people was not an "unlawful assembly;" that the interference by people with the channel of the river justified them in coming to stop the work, and show and use of force in compelling them to do so. Held that the prisoners had been ri Held, further, that, as no right of private defence of property is conf convicted. by the Penal Code, except as against the perpetrators of offences under the Penal Cand that, as, upon the facts of the case as found, no offence had been committed by people, their acts amounting merely to a civil trespass, and that, as there was no p ing or immediate necessity of a kind, showing that there was not time to have rec to the protection of the public authorities, no question as to the right of private de arose in the case. It was further contended that M's people did not assemble to eal a right or supposed right within the terms of s. 141 of the Penal Code, but to del right, and that such action did not make the assembly an unlawful one. Held that were members of an assembly, the common object of which was, by show of criminal and by criminal force, if necessary, to enforce the right to keep the river channel cle preventing the construction of the bund, and by demolishing it so far as it was const ed, and that the case came within s. 141, para. 4. Queen v. Mitto Sing (3 W. R., 41), Shunker Singh v. Burmah Mahto (23 W. R., Cr., 25), and Birjoo Singh v. Khub (19 W. R., Cr., 66), referred to and commented on.—Ganouri Lal Das v. Queen PRESS, I. L. R., 16 Cal. 206. [Pigot and Macpherson,]]. Jan. 14, 1889.]

When such right extends to causing any harm other than death.

The last preceding section, the right does not extend to the voluntary causing to the voluntary causing to the voluntary causing to the wrong-doer of any harm other than death.

In an affray respecting land, one party were the aggressors, and the other side the affair not ended fatally) would have been in the legal exercise of the right of de of property, and would have been entitled to the benefit of s. 104 of the Penal Code. that one year's imprisonment was sufficient punish; sat for the latter.—Queen v. Sker, 1 W. R. 34. [Kemp and Glover,]!

In an affray respecting 1.... one of the aggressive party was kince. The who were exercising the right of private defence of property, were acquitted prisoners of culpable hamicide, but convicted of rioting. Held that the prisoners, not being the guilty of culpable homicide, were not legally guilty of any other offence coupled when ing, and, not being rioters, or members of an unlawful assembly, could claim the book of s. 104, Penal Code.—Quren v. Mitto Singh, 3 W. R. 41. [Seton-Karr and Cambell, JJ. July 11, 1865.]

WHERE the accused, whose property had frequently been stolen, went, armed wit lathi, to watch his property, and with the lathi struck a thief, who died from the effect

Libow, keld (having regard to the nature of the injuries inflicted and the subsequent select of the accused) that the case did not fall within the 4th clause of s. 67, and that prisoner was not guilty of culpable homicide not amounting to murder, being prosted by ss. 97 and 104, he not having exceeded the legal right of private defence of prosted. 9. MOKEE, 12 W. R. 15. [Norman and Jackson, J]. June 28, 1867.]

In investigating a case of dispute as to land between two parties under ch. 22 of the control of Criminal Procedure (Act XXV. of 1861), a Magistrate found that one party were participated in the parties of rioting under s. 147 of the code, he punished both parties. Held that the party in possession were protected in the Penal Code; and the punishment inflicted in maintaining their possession that was accordingly remitted.—REFERENCE IN THE CASE OF TOOLSEE SINGH, W. E. 64; 2 B. L. R., A. Cr., 16. [Loch and Glover, J]. Dec. 21, 1868]

HERE A trespassed on the lands of B, whose servants seized and confined A till the conduct of B day, when B gave information to the police, it was held that the conduct of B servants in confining A could not be supported on the ground that they were exerting the right of private defence of property under ss. 97, 104, and 195 of the Penal Shurufooddin v. Kassinath, 13 W. R. 64. [Loch and Hobbouse, JJ. April 23,

CONTAIN persons made a sudden attack upon the prisoners for the purpose of cutting it expos. The prisoners resisted, and, having no time to complain to the police, inflicted wound upon one of the assailants with a bamboo, from the effects of which he afterwards had. The Sessions Judge convicted the prisoners under ss. 148 and 304. In appeal to the last Court, held that the force used, and the injuries inflicted, were not such as to exceed the last of private defence of property, and directed an acquittal.—QUEEN v. GOOROO CHURN word, 6 B. L. R., Ap., 9; 14 W. R. 69. [Kemp and Glover, J]. Nov. 19; 1870.]

WHERE the offence which occasions the right of private defence of property is crimities ass, the right of defence under s. 104 of the Penal Code only extends (subject to free retions of s. 99) to the voluntarily causing to the wrong-doers some harm other than the COBEN v. GOBURDHUN PARI, 14 W. R. 74. [Bayley and Glover, J]. Nov. 30, 10.]

WREER a person, assisted by a friend, retaliated severely on another, who trespassed to his house with the object of having intercourse with his wife, he was held to have combined no offence, ss. 96 and 104, Penal Code, justifying him causing any harm short of that to the trespasser; and his friend was also acquitted as having aided him to commit no lence.—Queen v. Dhaumun Tell, 20 W. R. 36. [Markby and Birch, J]. June 16, 13-]

A PARTY of persons, consisting of some five peadas, and a number of coolies sufficient the work to be done, went to a spot on a river flowing through the lands of M for the **space of either** repairing or erecting a bund across it to cause the water to flow down a **small on the** lands of their master T. The river at the time was almost dry, and the ty did not go armed ready to fight or use force, and they did not, during the subsequent chreace, use force. Having arrived at the spot about 10 A.M., they proceeded to work the same until the afternoon. At about 4 P.M., a body of men, consisting of about 200 in all, many of them armed with lathis, and headed by the prisoners, who were serats at M, which had been seen collecting together during the day, proceeded to the spot, d about 25 or 30 of them attacked T's men, some five of whom were more or less recely wounded with the *lathis*. The occurrence resulted in the conviction of some of servants for rioting under s. 147 of the Penal Code. M's people wholly denied any that on the part of T to construct or repair the bund, and had previously denied the strange of such right, and refused permission to T to exercise it. It was contended that and the state of M's people was not an "unlawful assembly;" that the interference by T's with the channel of the river justified them in coming to stop the work, and the ad use of force in compelling them to do so. Held that the prisoners had been convicted. Held further, that as no right of private defence of property is conby the Penal Code, except as against the perpetrators of offences under the Penal e, and that as, upon the facts of the case as found, no offence had been committed by copie, their acts amounting merely to a civil trespass, and that, as there was no pressrimmediate necessity of a kind, showing that there was not time to have recourse protection of the public authorities, no question as to the right of private defence

arose in the case. It was further contended that M's people did not assemble to enforce a right or supposed right within the terms of s. 141 of the Penal Code, but to defend a right, and that such action did not make the assembly an unlawful one. Held that they were members of an assembly, the common object of which was, by show of criminal force, and by criminal force, if necessary, to enforce the right to keep the river channel class by preventing the construction of the bund, and by demolishing it so far as it was constructed, and that the case came within s. 141, para. 4. Queen v. Mitto Sing (3 W. R., Cr., 41), Shunker Singh v. Burmah Mahto (23 W. R., Cr., 25), and Birrhoo Singh v. Khab Lall, (19 W. R., Cr., 66) referred to and commented on.—Ganouri Lal Das v. Queen Russess, I. L. R., 16 Cal. 206. [Pigot and Macpherson, JJ. Jan. 14, 1889.]

Note in I Edi P. 50

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Commencement and continuance of the right of private defence of property.

105. First.—The right—carivate defence of property commences when a reasonable apprehension of danger to the property commences.

Second.—The right of private defence of property against their continues till the offender has effected his retreat with the property, or the assistance of the public authorities is obtained, or the property has been recovered.

Third.—The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or but or wrongful restraint, or as long as the fear of instant death or of instant but or of instant personal restraint continues.

Fourth.—The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

Fifth.—The right of private defence of property against house breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

An affray having taken place, both parties turned out armed with deadly weapons. Reld that there was no right of private defence, as both parties well knew beforehand what was likely to happen. The factory had no right forcibly to attempt to sow indigo in land already sown with corn, although it was indigo-contract land. The villagers had no right to oppose force to force, the police-station being near at hand.—RRG. v. JROLALL, 3 Wyman's Rev., Civ., and Crim. Reporter 21; 7 W. R. 34. [Glover and Kemp,]J. Feb. 18, 1867.]

WHERE land in the possession of A was encroached on by the servants of B, who committed mischief on the land, and the servants of A assembled, and resisted the encroachments, the High Court declined to interfere with the Magistrate's order convicting the servants of A of unlawful assembly, as there was no error in law in the order of the Magistrate, who found as a fact that the right of defence of private property had ceased under cl. 4. 8. 165 of the Penal Code.—Queen v. Rajkristo Doss, 12 W. R. 43. [Kemp and Markby,]]. Aug. 3, 1869.]

WHERE A trespassed on the lands of B, whose servants seized and confined A till the following day, when B gave information to the police, it was held that the conduct of B and his servants in confining A could not be supported on the ground that they were exercising the right of private defence of property under ss. 97, 104, and 105 of the Penal Code.—Shurufooddin v. Kassinath, 13 W. R. 64. [Loch and Hobhouse, JJ. April 23, 1870.]

A PARTY of persons, consisting of some five peadas and a number of coolies sufficient for the work to be done, went to a spot on a river flowing through the lands of M for the purpose of either repairing or erecting a bund across it to cause the water to flow down a channel on the lands of their master T. The river at the time was almost dry, and the party did not go armed ready to fight or use force, and they did not, during the subsequent occurrence, use force. Having arrived at the spot-about 10 A.M., they proceeded to work at the bund until the afternoon. At about 4 P.M., a body of men, consisting of about 1,200 in all, m any of them armed with lathis, and headed by the prisoners, who were servants of M, which had been seen collecting together during the day, proceeded to the spot and about 25 or 30 of them attacked T's men, some five of whom were more or less servants.

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verely wounded with the lathis. The occurrence resulted in the conviction of some of M's servants for rioting under s. 147 of the Penal Code. M's people wholly denied any in the part of T to construct or repair the bund, and had previously denied the existence of such right, and refused permission to T to exercise it. It was contended that the assembly of M's people was not an "unlawful assembly;" that the interference by T's people with the channel of the river justified them in coming to stop the work; and the show and use of force in compelling them to do so. Held that the prisoners had been rightly convicted. Held further, that as no right of private defence of property is conferred by the Penal Code, except as against the perpetrators of offences under the Penal Code, and that as, upon the facts of the case as found, no offence had heen committed by T's people, their acts amounting merely to a civil trespass, and that as there was no pressing or immediate probably of a kind showing that there was not time to have recourse to the protection of the public authorities, no question as to the right of private defence arose in the case. It was further contended that M's people did not assemble to enforce a right or supposed right within the terms of s. 141 of the Penal Code, but to defend a right, and that such action did not make the assembly an unlawful one. Held that they were members of an assembly, the common object of which was, by show of criminal force, and by criminal force, if necessary, to enforce the right to keep the river channel clear by preventing the construction of the bund, and by demolishing it so far as it was constructed, and that the case came within s. 141, para. 4. Queen v. Mitto Sing (3 W. R., Cr., 41), Shunker Singh v. Burmah Mahto (23 W. R., Cr., 25), and Birjoo Singh v. Khub Lall (19 W. R., Cr., 66), referred to and commented on. — Ganouri Lall Das v. Queen Empress, I L. R., 16 Cal. 206. [Pigot and Macpherson, J]. Jam. 14, 1889.]

THE third clause of s. 99 of the Indian Penal Code must be read with the first clause of s. 105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences. Before such apprehension commences, the owner of the property is not called upon to apply for protection to the public autho-The apprehension which justifies a recourse to the authorities ought to be based on some information of a definite kind as to the time and place of the danger actually threaten ed. The accused No. 1 received information one evening that the complainants intended ed to go on his land on the following day, and uproot the juvari seed sown in it At about 3 o'clock next morning he was informed that the complainants had entered on his land, and were ploughing up the seed. Thereupon he at once proceeded to the spot, followed by the other accused, and remonstrated with the complainants. The complainants, without paying any attention to his remonstrances, commenced an attack on the accused. In the fight which ensued, both sides received serious injuries, and the leader of the complainants' party was killed. The accused were thereupon charged and convicted, under ss. 304, 114, 325, and 323 of the Indian Penal Code, of culpable homicide not amounting to murder, of voluntarily causing grievous hurt, and of causing hurt. Held, reversing the convictions, that, the complainants being the aggressors, the accused had, under the circumstances, the right of private defence, both of person and of property, and that, in the exercise of this right, they did not inflict more harm than was necessary. Held, also, that the accused were not bound to act on the information received on the previous evening, and seek the protection of the public authorities, as they had no reason to apprehend a night-attack on their property.—Queen-Empress v. Narsang Pathabhai, I. L. R., 14 Bom. 441. [Bird. wood and Jardine, JJ. Jan. 8, 13, 1890.]

Right of private de fence against an assault when there is risk of harm to innocent person.

Right of private de fence against deadly assau It when there is risk of harm to innocent person, his right of private defence extends to

the running of that risk.

Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if, by so firing, he harms any of the children.

Seefer from shunger, as man han will gust!

upne of Eating his blesh to foreserve his hips

CHAPTER V.*

OF ABSTMENT.

Abetment of a thing.

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107. A person abets the doing of a thing

- First-Instigates any person to do that thing; or,

Secondly-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place

in pursuance of that conspiracy, and in order to the doing that thing; or,

Thirdly—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of justice to apprehend Z. B, knowing that fact, and also that C is not Z. wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2—Whoever, either prior to, or at the time of, the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

In drawing up a charge of abetment, the section of the principal offence, and the section of this chapter (v.) which the case covers, should be mentioned, with the circumstances which bring the offence under the particular section of this chapter.—I W. R., Cr. L., 9; 2 W. R., Cr. L., 1, 8.

WHEN one person is accused of committing any offence, and another of abetment of such offence, they may be charged and tried together, or separately, as the Court thinks fit.—Crim. Pro. Code (Act) X, of 1882), s. 239.

WHERE a person has given security to be of good behaviour, the abetment by him of any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.—Crim. Pro. Code (Act X. of 1882), s. 121.

A CHARGE of abetment may be enquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.—Crim. Pro. Code (Act X. of 1882), s. 180, illus. a.

PERSONS present, and abetting a boy to set fire to the pile upon which a widow voluntarily burnt herself, were guilty themselves of culpable homicide. One who took no active part in causing the death, but induced the widow to return to the pile, was guilty of abetment of suicide—I R. J. P. J. 174. Will Mile to Gae 306 (Copies and the pile)

ABETMENT of the issue of a false certificate of summons. Although there was no chaukidar in the village of the name appearing on the receipt, acknowledging due service, the prisoner was acquitted in the absence of proof of guilty knowledge or belief, it being probable that he (an utter stranger in the village) was deceived by the villagers,—Queen v. Hissamudden, 3 W. R. 37. [Kemp and Seton-Karr, J]. June 27, 1863.]

THERE can be no conviction for abetment of murder without proof of murder. A husband, or those who aided him, cannot be convicted of kidnapping for taking away his

* The following chapters, namely, IV. (General Exceptions), V. (Abetment), and XXIII. (Attempts to Commit Offences) apply to offences punishable under ss. 421A 204A and 304A and Chaps. IV. and V. apply to offences punishable under ss. 124A and 225A.—Act XXVII. of 1870, s. 13.

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own wife; but they are guilty of rioting if they carry out the husband's object of getting possession of his wife by force and violence, and in the darkness of night.—Queen v. Askur, W. R., Sp., 12. [Steer and Seton-Karr, J] Feb. 22, 1864.]

PROOF of dishonest or fraudulent intent is necessary for a conviction under s. 496 of the Penal Code of falsely going through the ceremony of marriage. The mere act of allowing the marriage to take place at one's house does not amount to the abetiment of an illegal marriage.—Queen v. Kudum, W. R., Sp., 13. [Steer and Morgan, JJ. Feb. 24, 1864.]

THE prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 498 of the Penal Code, and for wrongful confinement of her under s. 343, held that both sentences and not stand, and that, as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone.—QUEEN v. ISHWAR CHUNDER JOGI, W. R., Sp., 21. [Loch and Seton-Karr, J]. April 12, 1864.]

When two persons take an active part in a murder, they become principals in the first degree, though one of them only may have been the actual killer. If one stood by whilst the crime was being committed, he would be an abettor.—Queen v. Jan Mahomed, W. R. 49. [Kemp and Glover, JJ. Dec. 26, 1864.]

The conviction of a police-inspector for having abetted the bringing of a false charge of murder quashed, because it was not distinctly shown that he preferred the charge mala side.—QUEEN v. MUTHOORAPERSHAD PANDAY, 2 W. R. 9. [Kemp and Glover, J]. Jan. 18, 1865.]

A PERSON can be convicted of abetment of their under the 1st explanation of s. 107 of the Penal Code only if he either procures, or attempts to procure, the commission of the their. Mere subsequent knowledge of the offence is insufficient.—Queen v. Shumeerudden, 2 W. R. 40. [Kemp and Glover, JJ. Mar. 14, 1865.]

KNOWING of a design to commit a dacoity, and voluntarily concealing the existence of that design with the knowledge that such concealment would facilitate the commission of dacoity, does not amount to an abetment of the dacoity.—QUBEN v. JHUGROO, 4.W. R. 2. [Seton-Karr and Jackson, JJ. Sep. 4, 1865.]

To amount to the offence of extortion, property must be obtained by intentionally putting a person in fear of injury to that person, and thereby dishonestly inducing him to part with his property. The mere issue of a hukumnama (to correct statistical information) by a police-officer is no legal ground for a conviction of abetment of cheating or of extortion.—QUBEN v. MEAJAN, 4 W. R. 5. [Kemp and Seton-Karr, J]. Sep. 9, 1865.]

PERSONS punished as principals cannot also be punished for abetment of the same offence.—Queen v. Jeetoo Chowdhry, 4 W. R. 23. [Loch and Glover, JJ. Nov. 8, 1863.]

HELD that the prisoners could not be convicted of abetment of grievous hurt and of abetment of riot after having been convicted of both charges as principals. As, however, the evidence credited by the jury was held by the High Court to support a conviction of curpable homicide, and as the prisoners, even on their conviction on the lesser charge of grievous hurt, might have been sentenced to a much heavier punishment than had been passed on them, their punishment was not reduced.—QUEEN v. RAMNARAIN JOSH, 4 W. R. 37. [Kemp and Seton-Karr, JJ. Dec. 21, 1865.]

THE prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before the Deputy Magistrate on a charge of defamation. Held that this was abettment of giving false evidence in a stage of a judicial proceeding, and was triable before a Court of Session only.—In re ANDY CHETTY, 2 Mad. H. C. R. 438. [Frere and Innes,]]. Aug. 12,1865.]

THE conviction of certain persons as abettors of culpable homicide in having looked on passively at a suttee was upheld on appeal. Campbell, J., in passing judgment in the case, made the following remarks: "The more important question remains behind—whether all persons in the position of the appellants are not, by the mere act of going to a states, and giving it, by their presence, their countenance and support, guilty of abetteen to suttee, even though nothing more active can be proved against them. It would seem to be very dangerous to let it be supposed that, so long as it cannot be proved that a man brought the faggots or the fire, he may give the utmost moral and actual support to a

suttee with impunity. Practically, I believe, spectators are most powerful abettogs I am inclined to think that every man of education or intelligence who goes to a suttee, and stands an unopposing and passively supporting spectator, does, by every step towards the suttee, commit an act of abetment.—QUEEN v. HOTEE SINGH, I R. J. P. J. 246. The above ruling is contrary to the remarks of the Indian Law Commissioners on the Penal Code and to the following cases: Queen v. Gora Chand Gope, 5 W. R. 45; Queen v. Goburdhun Bera, 6 W. R. 80; Gopal Chunder Sirdar v. Foolmoni Bewa, I. L. R. 8 Cal. 728; S. C., 11 C. L. R. 223.

In the case of Queen v. Thotee Singh (I R. J. P. J. 246), it was held by Campbell and Kemp that persons who looked on passively at a suttee were rightly convicted of abetment of culpable homicide. But from the following remarks of Sir Barnes Peacock in another case, it will be seen that a contrary and more sensible opinion was emertained: "If the object and design of those who seized Amoordee was merely to take him to the thana or a charge of theft, and it was not part of the common design to beat him, they would not all be liable for the consequence of the beating, merely because they were present . It is laid down that, when several persons are in company together engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits any offence, the others will not be involved in the guilt unless the act done was in some manner in furtherance of the common intention. It is also said that although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who committed it, he will not be a felon, merely because he did not attempt to prevent it, or to apprehend the felon. But if several persons go out together for the purpose of apprehending a man, and taking him to the thana on a charge of theft, and some of the party, in the presence of the others, beat and ill-treat the man in a cruel and violent manner, and the others stand by and look on, without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties, and acting in concert, and that the beating was in furtherance of a common design. I do not know what the evidence was. All I wish to point out is that all was are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals."—QUEEN v. GORA CHARB GOPE, 5 W. R. 45; B. L. R., Sup. Vol., 443; 1 Ind. Jur., N. S., 177; 1 Wyman's Rev., Civ., and Crim. Rep. 43. [Peacock, C.J., and Trevor and Norman, J]. Mar. 3, 1866.]

Where a constable and others enter a house, and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others.—Govt. v. Mahomed Hossein, 5 W. R. 49. [Norman and Campbell, JJ. Mar. 5, 1866.]

The prisoners having abetted an assault, and murder having been committed, teld, under the peculiar circumstances of the case, that they were guilty of abetment of grievous hurt, and not abetment of murder.—Queen v. Goluck Chung, 5 W. R. 75. [Campbell and Macpherson,]]. April 28, 1866.]

Held that it is not necessary in a case of extortion under the Penal Code that the threat should be used, and the property received, by one and the same individual, nor that the receiver should be charged with abetment, although that might be done.—Reg. v. Shankar Bhagvat, 2 Bom. H. C. R. 394. [Couch, C.J., and Warden, J. July 12, 1856.]

A MASTER is not criminally responsible for the wrongful act of a servant, unless be can be shown to have expressly authorized it.—Suffer Ally Khan v. Golam Hyder Khan, 6 W. R. 60. [Norman and Seton-Karr, J]. Aug. 27, 1866.]

Held that the prisoners, having abetted the suicide, were rightly convected by the Judge for that offence. The sentence was mitigated under the circumstances.—Governous Gopaul Sing, 1 Agra H. C. R. 21. [Pearson and Turner, JJ., and Spankie, Offg.]. Sep. 10, 1866.]

• A PERSON may be convicted of murder on his own confession. Where a master accompanies a servant, knowing the latter's intention to commit murder, and is present at the commission of the murder, although he struck no blow, still he is guilty as a principal, the only reasonable presumption being that both were acting with a common intent.—QUEEN v. HYDER JOLAHA, 6 W. R. 83. [Kemp and Markby, J]. Sep. 21, 1866.]

PRISONER was present at a murder without being aware that such an act was to be committed. Through fear he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. Held that he was guilty, not of abetment of murder, but causing the disappearance of evidence of a crime under s. 201 of the Penal Code.—Queen v. Goburdhun Bera, 6 W. R. 80. [Loch and Pundit, J]. Oct. 4, 1866.]

THREE persons, who put up a fourth to personate one whose authority was required to complete a conveyance of immoveable property, were held guilty under s. 94 of the Registration A& (XX. of 1866).—QUEEN v. SOLEEMODDEEN, 7 W. R. 63. [Seton-Karr, J. May 6, 1867.]

WHERE Calsely represented himself to be U, and the writer of a document signed by U, and T, knowing that C was not U, and had not written such document, adduced C as U, and as the writer of that document, held that T ought to have been convicted on a charge of abetting the giving of false evidence.—Queen v. Chundi Churn Nath, 8 W. R. 5. [Jackson and Hobhouse, JJ. June 4, 1867.]

UNDER S. 94, Act XX. of 1866, an abettor may be punished more severely than his principal can be.—QUBEN v. GOPAL PROSAD SEIN, 8 W. R. 16. [Seton-Karr and Macpherson, JJ. June 15, 1867.]

A PRISONER who consented to form one of a party who committed thest, and resiled from his agreement, but was present at the commission of thest, does not come within cl. 2, s. 107, Penal Code, and ought not to have been convicted of the thest, but of the abstment thereof under cl. 3, s. 107. and s. 109, Penal Code, read together.—QUEEN D. BOODHUN MOOSHUR, 8 W. R. 78. [Glover, J. Oct. 30, 1867.]

WHERE a prisoner, who appealed to the Commissioner from an order of an assessof under ACP XXI. of 1867, filed a stamp-paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp-paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect, which was antedated, it was held that he was guilty of having abetted the commission of a forgery of a document within s. 463 and cl. 1, s. 464 of the Penal Code. The evidence of a prisoner taken by a Collector cannot be used against him on his trial before a Magistrate.—Queen v. Sookhmoy Ghose, 10 W. R. 23. [Loch and Glover, J]. July 25, 1868.]

WHERE A intended to register a deed, but was too ill to do so, and B, who was known to A, personated A, and had the deed registered in her name, it was held that in the absence of anything to prove that it was intended to defraud anybody. A was not guilty of cheating by personation under s. 419 of the Penal Code, but of an offence under s. 93 of the Registration Act (XX. of 1866). C and D, who abetted A, were convicted of an offence under s. 94 of the said Act XX.—Revision of Proceedings in the Case of Loothy Bewa, 11 W. R. 24; 2 B. L. R., A. Cr., 25. [Norman and Jackson, JJ. Mar. 31, 1860.]

WHERE, of several persons constituting an unlawful assembly, some only are armed with sticks, and A, one of them, is not so armed, but picks up a stick and uses it, B (the master of A), who gave a general order to beat, is guilty of abetting the assault made by A.—QUEEN v. RASSOKOOLLAH, 12 W. R. 51. [Glover and Mitter, J]. Sep. 2, 1869.]

HELD that, where A gave a dao to B, who had given out his intention to coerce the party against whom he was acting, and who inflicted grievous hurt on such party with the cao, A was guilty of abetment within the second head of the third clause of s. 107 of the Penal Code.—Queen v. Eshan Meah, 12 W. R. 52. [Glover and Mitter, JJ. Sep. 3, 1869.]

To make a master criminally responsible for an offence committed by his servants, it must be shown that there has been some act or illegal omission on the part of the master wherebyshe abetted the offence, or some prior instigation or conspiracy. Evidence not admissible cannot be received as corroborative proof.—Crown Prosecutor v. Shamsunder, 1 N.-W. P. 310. [Pearson and Turner,]]. Sep. 3, 1869.]

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An omission to give information that a crime has been committed does not, under s. 107 of the Penal Code, amount to abetment, unless such omission involves a breach of a legal obligation. [See ss. 44 and 45 of the Criminal Procedure Code (Act X. of 1884).—QUBEN v. KHADIM SHEIK, 4 B. L. R, A. Cr., 7. [Loch and Glover, J]. Nov. 23, 1869.]]

The substantive law applicable to a British-born subject tried in the High Court of Judicature at Bombay for destroying a British ship on the high seas, at a distance of more than three miles from the shores of British India, is the English law, and not the Penal Code, notwithstanding the provisions of Stat. 30 and 31 Vic., c. 124, s. 11. The same substantive law is applicable to prisoners who conspire together in Bombay to destroy such ship on the high seas, and such ship is so destroyed in consequence. The procedure applicable in such cases is the ordinary criminal procedure of the High Court. The question whether the Indian Legislature has power to legislate with telerence to offences committed on the high seas considered. There is not any Act of the Indian Legislature now in force which provides for the offence of destroying a ship when countited at a greater distance than three miles from the coast, or for the abetment in British India of such an offence so committed.—Reg. v. Elmstone, Whitwell, et al., 7 Bom. H. C. R. 89. [Westropp, C.J., and Bayley and Green, J]. July 22, 30, 1870.]

EVIDENCE that a woman prepared herself to commit suicide in the presence of the accused, that they followed her to the pyre, and stood by her, her step-sons crying, "Ram, Ram," and one of the accused admitting that he told the woman to say, "Ram, Ram," and she would become "suttee," proves active connivance and unequivocal countenance of the suicide by the accused, and justifies the inference that they had engaged with ber in a conspiracy for the commission of the suttee.—Reg. v. Mohit Pandey, 3 N.-W. P. 316 [Pearson, J. Sep. 6, 1871.]

THE Sessions Court at Patna was held to have jurisdiction to try the offence of abet-ment of waging war against the Queen, though the waging of war did not take place in Patna, the rule of law as to abetment being that, where parties concert together, and have a common object, the act of one of the parties, done in furtherance of the common object, and in pursuance of the concerted plan, is the act of the whole. The jurisdiction of the Sessions Court at Patna was not affected by the erroneous statement in the charge of the abetment having taken place at Calcutta, when the evidence was sufficient to show the abetment at Patna, such erroneous statement being an error or defect in the charge which is cured by s. 537 of the Code of Criminal Procedure, 1882.—Queen v. Ameer Khar, 17 W. R. 15; 9 B. L. R. 36. [Couch, C.J., and Jackson and Macpherson, J]. Dec. 12, 1871.]

The carrying off of certain buffaloes belonging to the complainant by order of the accused, and the retention of them in the custody of the latter's servant, were held to amount to an abetment of theft as defined in the Penal Code.—In the Matter of Tarinem Prosaud Banerjee, 18 W. R. 8. [Kemp and Glover, JJ. June 14, 1872.]

THE lower Criminal Courts cannot punish, as abettors, persons who gave evidence in support of false charges, or rather charges found by such Courts to be false. S. 10 of the Penal Code does not contemplate any acts of subsequent abetment, or provide for the punishment of such offences, except when they are such as are defined in ss. 212 to 218.—Queen v. Paun Pundah, 18 W. R. 28; 9 B. L. R., Ap., 16. [Kemp and Glover JJ. July 11, 1872.]

It is not necessary to constitute the offence of abetment that the act abetted should be committed.—Reference in the Case of Dinonath Burooa, 18 W. R. 32. [Kemp am Glover, JJ. July 24, 1872.]

S. 30 of the Evidence Act (I. of 1872) ought to be considered with great strictness, and the confession of one person is not admissible in evidence against another, although the two are jointly tried, if one is tried for the abetment of the offence for which the other is on his trial.—QUEEN v. JAFFER ALI, 19 W. R. 57. [Kemp and Glover, JJ. April 17, 1873.]

In order to convict a person of abetting the commission of a crime, it is not only necessary to prove that he has taken part in those steps of the transaction which are innocent, but in some way or other it is absolutely necessary to connect him with those steps of the transaction which are criminal. There can be no offence of the abetment of giving false evidence unless the person charged with abetment intended, not only that the statement should be made, but intended that the statement should be made falsely.—Queen v. Nim Chang Mookerjee, 20 W. R. 41. [Markby and Birch, J]. June 27, 1873.]

WHERE a foreign subject, resident in foreign territory, instigated the commission of an offence which, in consequence, was committed in British territory, held that the instigation not having taken place in any district created by the Code of Criminal Procedure, the instigator was not amenable to the jurisdiction of a British Court established under that Code, s. 66.—Reg. v. Pirtai, 10 Bom. H. C. R. 356. [Melvill and West, J]. July 19, 1873.]

THE Magistrate convicted accused of abetting the giving of false evidence in a judicial case proceeding before himself. Held that, as by the proceedings of 24th March 1873 the Magistrate could not have tried the person who gave false evidence, he could not try the abettor.—PRO., Nov. 6, 1873; 7 Mad. H. C. R., Ap., 28.

THE offence of abetment by instigation depends upon the act which is actually done by the person whom he abets.—QUEEN v. IMAMDI BHOOYAH, 21 W. R. 8. [Phear and Morris, J]. Dec. 1, 1873.]

WHERE a flead-constable, who knew that certain persons were likely to be tortured for the purpose of extorting confession, purposely kept out of the way, it was held that he was guilty of abetment under the words of s. 107 of the Penal Code, expl. 2.—QUBEN v. KALER CHUM GANGOOLY, 21 W. R. 11. [Markby and Birch, J]. Dec. 4, 1873.]

S was charged with the preparation of a certain record, and was in the habit of preparing it from certain abstracts made and read to him by D. D made and read false abstracts, whereby an incorrect record was prepared. The Court was of opinion that D could not strictly be held to have committed the offence described in s. 218 of the Penal Code. He was guilty, however, of abetment of the offence described in that section, and not the less so, that S had no guilty knowledge or intention in the matter.—Queen v. Brij Mohan Lal, 7 N.-W. P. 134. [Pearson, J. Jan. 25, 1875.]

If a number of persons, assembled for any lawful purpose, suddenly quarrel with an intruder without any previous intention or design, they do not commit "riot" in the legal sense of the word. To prove abetment under s. 107, Penal Code, by fillegal omission," it would be necessary to show that the accused intentionally aided the commission of the offence by his non-interference.—KHAJAH NOORUL HOSSEIN alias KHAJA WAHEED JAN v. FABRE-TONNERRE, 24 W. R. 26. [Glover and Mitter, J]. July 12, 1875.]

THE offence of abetment under the Penal Code is a substantive offence. The conviction of an abettor is, therefore, in no way dependent on the conviction of the principal.—Reg. v. Maruti Dada, I. L. R., I Bom. 15. [West and Nanabhai Haridas, JJ. Oct. 12, 1875]

M INSTIGATED Z to personate C, and to purchase in C's name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. M acted with the intention that such endorsement might be used against C in a judicial proceeding. Held that the offence of fabricating false evidence had been actually committed, and that M was properly convicted of abetting the commission of sech offence. Queen v. Ramsaran Chowbey (4 N.-W. P. 46) distinguished and observed on.—Empress v. Mula, I. L. R., 2 All. 105. [Turner, J. Jan. 24, 1879.]

The supplying of food to a person about to commit a crime is not necessarily an abetment of the crime; but if food were supplied in order that the criminal might go on a journey to the intended scene of the crime, or conceal himself while waiting for an opportunity to commit the crime, the supply of food would be in order to facilitate the commission of the crime, and might facilitate. it—In re Lingam Ramanna, I. L. R., 2 Mad. 137. [Turner, C.J., and Muttusami Ayyar, J. May 3, 1880.]

A HINDU, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family he lived in commensality with it, but he did not treat such property as joint family-property, but as his own property. Held that such property was his sole property, and his brother was not a joint owner of it, and could properly be convicted of theft in respect of it. It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property.—Empress v. Sita Ram Rai, I. L. R., 3 All. 181. [Straight, J. Aug 16, 1880.]

To prepare, in conjunction with others, a copy of an intended false document, and to buy a stamped paper for the purpose of writing such false document, and to ask for information as to a fact to be inserted in such false document, do not constitute forgery nor an attempt to commit forgery under the Penal Code, but are facts which would support a con-

viction for abstract of forgery as being acts done to facilitate the commission of the offence.—Reg. & Padala Venkatasami, I.L.R., 3 Mad. 4. [Turner, C.J., and Kindersley, Mar. 8, 1881.]

The mere fact that the offence of extortion under s. 384 of the Penal Code is committee in the presence of the village-chaukidar, without eliciting any disapproval on his part, without render him liable as an abettor of the offence.—In the Matter of the Patition of Gopal Chunder Sirdar; Gopal Chunder Sirdar v. Foolmoni Bewa, I. L. R., 8 Ca 728; 11. C. L. R. 223. [McDonell and Field,]]. April 20, 1882.]

A EXECUTED to B on plain paper an instrument which should have been executed on paper bearing a four-anna stamp. B filed a suit against A in the Civil Court, and produce the instrument in evidence. The Civil Court called upon A to pay the duty and penalty and, on B's refusal to pay, impounded the instrument, and sent it to the Collector. The Collector, concurring with the opinion of the Civil Court, sanctioned the prosecution, in the Criminal Court, of both A and B, but without requiring the payment of the duty and cally. The prosecution resulted in the conviction of A under s. 61 of the Stamp Act (1.0 1879), and of B of abetment of A's offence. Held that the convictions were illegal in much as the Collector failed to allow an opportunity of paying the duty and penalty. Held further that mere receipt of an unstamped instrument did not constitute the offence of a abetment of the execution of such an instrument.—Empress v. Janki, I. L. R., 7 Bom. 82 [West and Pinhey, JJ. Nov. 2, 1882.]

K, knowing that he was suffering from cholera, entered a train as a passenger without informing the Railway Company's servants of his condition. M, knowing of K's condition bought K's ticket, and travelled with him. Held that K was properly convicted under s. 269 of the Penal Code of negligently doing an act which was, and which he had reason to believe was, likely to spread infection of a disease dangerous to life, and M of abetment of K's offence.—Queen-Empress v. Krishnappa, I. L. R., 7 Mad. 276. [Turner, C.J., and Kernan, J. Dec. 14, 1883.]

A DEBTOR, having paid a sum of money to his creditor, accepted from the latter an unstamped receipt, promising to affix a stamp thereto. Held that this did not constitute abetment, within the meaning of s. 107 of the Penal Code, of the offence of making an unstamped receipt. Empress v. Bahadur Singh (Weekly Notes, 1885, p. 30) distinguished. Empress v. Fanki (I. L. R., 7 Bom. 82) and Empress v. Bhairon (Weekly Notes, 1884, p. 37) referred to.—Queen-Empress v. Mitthu Lal, I. R., 8 All. 18. [Petheram, C.]. Oct. 26, 1885.]

A was baptized in infancy into the Roman Catholic Church, but subsequently relapsed with the rest of her family, into Hinduism, and was married to a Hindu. Her Hindu husband since discarded her, and alleged that he would not have married her if he had known that she had been baptized. A was subsequently re-admitted into the Roman Catholic Church, and married by B, a priest, to a Roman Catholic during the lifetime of her Hindu husband. Held that A's marriage with the Hindu was subsisting and valid at the time of her Christian marriage; that she was guilty of the offence of bigamy; and that B was guilty of abetting that offence. Lopes v. Lopes (I. L. R., 12 Cal. 709) discussed.—In re MILLARD, I. L. R., 10 Mad. 218. [Collins, C. J., and Parker, J. April 1, 1887.]

MERE non-feasance will not generally amount to an illegal omission (I Russ. 91); but circumstances may exist where mere non-feasance towards a child of tender years amounts to an illegal omission. So a refusal or neglect to provide sufficient food or other necessaries for an infant of tender years unable to provide for or take care of itself, by a party obliged by duty or contract to provide for it, amounts to an illegal omission.—1 Russ. 80.

Abettor. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

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ABETMENT.

SEC. 108.

• Explanation 2.—To constitute the offence of abetment, it is not necesry that the act abetted should be committed, or that the effect requisite to estitute the offence should be caused.

Illustrations.

(a.) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to nmit murder.

(b.) A instigates B to murder D. B, in pursuance of the instigation, stabs D. D govers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be pable by law of committing an offence, or that he should have the same lity intention or knowledge as that of the abettor, or any guilty intention or towicage.

Illustrations.

(s.) A, with a guilty intention, abets a child or a lunatic to commit an act which would an offence if committed by a person capable by law of committing an offence, and tring the same intention as A. Here A, whether the act be committed or not, is guilty abetting an offence.

(i.) A, with the intention of murdering Z, instigates B, a child under seven years of a to do an act which causes Z's death. B, in consequence of the abetment, does the and thereby causes Z's death. Here, though B was not capable by law of commitgan offence, A is liable to be punished in the same manner as if B had been capable hw of committing an offence, and had committed murder, and he is, therefore, subject the sunishment of death.

(c.) A instigates B to set fire to a dwelling-house. B, in consequence of the unsounds of his mind, being incapable of knowing the nature of the act, or that he is doing at is wrong or contrary to law, sets fire to the house in consequence of A's instigation. becommitted no offence, but A is guilty of abetting the offence of setting fire to a p

telling-bouse, and is liable to the punishment provided for that offence.

(4) A, intending to cause a theft to be committed, instigates B to take property being to Z out of Z's possession. A induces B to believe that the property belongs to B takes the property out of Z's possession in good faith, believing it to be A's promy. B, acting under this misconception, does not take dishonestly, and therefore does commit theft. But A is guilty of abetting theft, and is liable to the same punishment B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder and C commits that offence in consequence of B's instigation. B is liable to be punishof this offence with the punishment for murder; and as A instigated B to commit the sence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of between by conspiracy that the abettor should concert the offence with the It is sufficient if he engage in the conspiracy in purenon who commits it. hance of which the offence is committed.

Illustration.

Research with B a plan for poisoning Z. It is agreed that A shall administer the B then explains the plan to C, mentioning that a third person is to administer we policion, but without mentioning A's name. C agrees to procure the poison, and process and delivers it to B for the purpose of its being used in the manner explained. A delivers the poison; Z dies in consequence. Here, though A and C have not contogether, yet C has been engaged in the conspiracy in pursuance of which Z has manufered. C has, therefore, committed the offence defined in this section, and is liable is the punishment for murder.

fet DL of the co 108. A heron abets an offence within the meaning between of this code who, in Drivish India about the ammission of any act withink & beyond obsiding India which would anotitude an office if an A, a Poritish India, instigates 05, a foreigne in Gos to Commit a hunder in Gos. "A is puilly of abething hunders. maictheir for the abetinent of an abetiness of a rima pal actually committed.—Емркезз v. Ткочьискио NATA C. L. R. 525. [Jackson and White, JJ. Nov. 12, 1878.] x 108 A 109. Whoever abets any Punishment of abetment if the act abetted is commit-Court by act abetted is committed in cons which offence ment, and no express provision is ma abetted is ted in consequence, and where triable. no express provision is made for its punishment. for the punishment of such abetment, Cog. if for with the punishment provided for the of offence abetted cog.
According as

warrant or

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ted.

or not.

Explanation.—An act or offence is said to be committed in ca of abetment when it is committed in consequence of the instigu pursuance of the conspiracy, or with the aid which constitutes the Illustrations.

(a.) A offers a bribe to B, a public servant, as a reward for showing A so

- in the exercise of B's official functions. B accepts the bribe. A has abetted ted is bailable defined in section 161. (b.) A instigates B to give false evidence. B, in consequence of the instigate mits that offence. A is guilty of abetting that offence, and is liable to the same
 - (c.) A and B conspire to poison Z. A, in pursuance of the conspiracy, proc
 - opoison, and delivers it to B, in order that he may administer it to Z. B, in purse the conspiracy, administers the poison to Z in A's absence, and thereby causes 2 Here B is guilty of murder. A is guilty of abetting that offence by conspiracy. liable to the punishment for murder.

Rulings.

S. 100 of the Penal Code contemplates that the act abetted should be comme consequence of the abetment. The term "fabrication" in s. 193 refers to the fab of false documentary evidence to be used in a suit, so that, to convict under this it is essential to aver and to prove that the fabricated documents were intended purpose. The illegal concealment, by act or omission, contemplated by s. 124 Code, has reference to the existence of a design on the part of third persons to fall evidence.—QUEEN v. RAJCOOMAR BANERJEE, I Ind. Jur., O. S., 105. [Trevor and Karr, JJ. Sep. 27, 1862.]

ABETMENT of the issue of a false certificate of summons. Although there we chaukidar in the village of the name appearing on the receipt acknowledging due se the prisoner was acquitted in the absence of proof of guilty knowledge or belief, it, probable that he (an utter stranger in the village) was deceived by the villagers.—Q v. HISSAMUDDEEN, 3 W. R. 37. [Kemp and Seton-Karr, JJ. June 27, 1863.]

THE prisoners having been sentenced for abetment of abduction of a woman ss. 109 and 498 of the Penal Code, and for wrongful confinement of her unders. 343. that both sentences could not stand, and that, as the essence of the case was abduce

[78] In - Mention the provisions in the Penal cook for the mishmul-J. Abetment Digitized by Google

abettors therein, should be punished for it alone.—QUEEN v. ISHWAR W. R., Sp., 21. [Loch and Seton-Karr, JJ. April 12, 1864.] [Loch and Seton-Karr, JJ. April 12, 1864.]

erson represented a girl to be the daughter of one woman when she was ledge the daughter of another woman, held that he was guilty of cheating under s. 416 of the Penal Code, and that it was unnecessary to bring in s. abetment.—Queen v. Dhanput Ojhah, 7 W. R. 51. [Glover, J. April

ordered B and C to seize and forcibly take D in the contemplation of an ty at least of abetting the commission of voluntarily causing grierous. Doorgessur Surman, 7 W. R. 61. [Hobbouse, J. April 30, 1867.] and D was so beaten and tortured as to have died in consequence, held

84, Act XX. of 1866, an abettor may be punished more severely than his QUEEN v. GOPAL PROSAD SEIN, 8 W. R. 16. [Seton-Karr and Macnne 15, 1867.] -.

who consented to form one of a party who committed theft, and resiled ment, but was present at the commission of theft, does not come within cl. Code, and ought not to have been convicted of the theft, but of the abetnder cl. 3, s. 107, and s. 109, Penal Code, read together.—QUEEN v. Boo-DR, 8 W. R. 78. [Glover, J. Oct. 30, 1867.]

rying off of certain buffaloes belonging to the complainant by order of the the retention of them in the custody of the latter's servant, were held to abetment of theft as defined in the Penal Code.—TARINEE PROSAUD BANER-[Kemp and Glover, JJ. June 14, 1872.]

necessary to constitute the offence of abetment that the act abetted should d.—REFERENCE IN THE CASE OF DINONATH BUROOA, 18-W. R. 32. [Kemp July 24, 1872.]

Ader paternal uncle of a Mahomedan girl, a minor, disposed of her in marriage mew she had previously been given in lawful marriage by his younger brother. the act did not, per se, constitute a criminal offence, even though the second were valid, it appearing that the accused was the only person concerned in the arriage who knew of the first, and that the girl was not present. A and B were under ss. 100 and 405 of the Penal Code—A for giving his niece (a minor) in she being then married, and B for aiding therein. The girl was not present at age, and there was no evidence to show that A had conspired with any person om the jury acquitted. Held that the acquittal of B involved the acquittal of BE MATTER OF ABDOOL KURREEM v. EMPRESS, 3 C. L. R. 81; I. L. R., 4 Cal. 10. **hd** Prinsep, JJ. July 19, 1878.]

MISTIGATED Z to personate C, and to purchase in C's name certain stamped paper, quence of which the vendor of the stamped paper endorsed C's name on such the purchaser of it. M acted with the intention that such endorsement might against C in a judicial proceeding. Held that the offence of fabricating false eviad been actually committed, and that M was properly convicted of abetting the bion of such offence. Queen v. Ramsaran Chowbey (4 N.-W. P. 46) distinguish beserved on.—Empress v. Mula, I. L. R., 2 All. 105. [Turner, J. Jan. 24, 1879.] EMBER of the caste of Ajanya Rajput Guzars, residing in Khandesh, executed a divorce to his wife. The Court held on the evidence that the deed was proved, in this caste a husband was, for a sufficient reason, such as incontinence, allowed his wife; that the deed in the present case had not been executed for a suffison, and that, consequently, the parties entering into a second marriage were an offence under s. 494 of the Penal Code; and that the priest who officiated at riage was an abettor under ss. 494 and 109. Mere consent of persons to be pren illegal marriage, or their presence in pursuance of such consent, or the grant of odation in a house for the marriage, does not necessarily constitute abetment of riage.—Empress v. Umi, I. L. R., 6 Bom. 126. [Melvill and Kemball, J]. Jan.

DOTHER cannot have a right to the custody of her legitimate children adversely. er. Ordinarily the custody of the mother is the custody of the father, and any the children from place to place by the mother ought to be taken to be con-Fith the right of the father as guardian, and not as a taking out of his keeping.

3: Parter effect, Comoing Diff! Effect.
4. Parter present.
ABETMENT.

CHAP. V.

Sacs. 110,

Sacs. 110,

Sacs. 110,

Hisdu woman left her husband's house, taking with her her infant daughter,

and on the same day the daughter was married on the father's consent. it was believed to the house the father's consent. But where a Hisdu woman lest ner nusband's house, taking with her her infant daughter, But where a Hisdu woman lest not one the same day the daughter was married to B, the But where a the house of A, and on the same day the daughter was married to B, the and went to the later's consent, it was held that A was rightly convicted under and went to the penal Code of abetting the offence of kidnapping.—In the Matter brother of A, without Penal Code of abetting the offence of kidnapping.—In the Matter ss. 109 and 363 of the Pran Krishna Surma, I. L. R., 8 so THE PETITION R. 6. [Wilson and Macpherson, J]. June 20, 1882.]

SS. 109 and JON OF PART MISSING SURMA: EMPRESS v. PRAN KRISHNA SOFTHE PATETION OF THE 10 C. Let a house, who permitted disorderly people to use it for gambling, and The lessed of a house, who permitted disorderly people to use it for gambling, and The lessed annoyance to the public, was convicted of an offence under the Penal Code, thereby caused annoyance, that the accused had not engaged the house with the obtherew It appeared, and a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.—Queenget of letting it out as a gaming-house. Held that the conviction was right.

[Mathematical Action of the letting it out as a gaming-house it out as a ga

JJ. Jan. 28, 1891.]

The following

notes equally apply to sa.

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110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or Punishment of abetment if knowledge from that of the abettor, be punished uson abetted does act with different intention from that with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor, and with no other.

111. When an act is abetted, and a different act is done, the abetter is liable for the act done, in the same manner and to Liability of abettor when the same extent as if he had directly abetted it; proone act abetted and different vided the act done was a probable consequence of act done. Proviso. the abetment, and was committed under the influ-

ence of the instigation, or with the aid, or in pursuance of the conspiracy which constituted the abetment.

Illustrations.

• (a.) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison

According as offence abet-ted is bailable into the food of Y, which is by the side of that of Z. Here, if the child was acting under According as offence abet the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner, and to the same extent, as if he had instigated the child to put the poison into the fcod of Y. (b.) A instigates B to burn Z's house. B sets fire to the house, and at the same time commits theft of property there. A, though guilty of abetting the burning of the

house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning. (c.) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and, being resisted by Z, one of the inmates, murder Z. Here, if the murder was

Rulings.

the probable consequence of the abetment, A is liable to the punishment provided for murder.

THE prisoners having abetted an assault, and murder having been committed, it was held, under the peculiar circumstances of the case, that they were guilty of grievous hurt but not of abetment of murder.—QUEEN v. GOLUCK CHUNG, 5 W. R. 75. [Campbell and Macpherson, JJ. April 28, 1866. Where A ordered B and C to seize and forcibly take D in the contemplation of a

assault upon D, and D was so beaten and tortured as to have died in consequence, held that A was guilty at least of abeting the commission of voluntarily causing grievous hurt -Queen v. Doorgessur Surman, 7 W. R. 61. [Hobhouse, J. April 30, 1867. M AND C were proved to have connived at a robbery in which excessive violence was

used, resulting in the death of the persons robbed. The Sessions Judge convicted M and • C of abetment of murder, on the ground that the death was "a probable consequenced the intention known and abetted by them." Held that the test of guilt in charges of abet ment must always be whether, having regard to the immediate object of the instigation of conspiracy, the act done by the principal is one which, according to ordinary experience and

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common sense, the abettor must have foreseen as probable; and that, having regard both to the strictness of the tests which should be applied to the interpretation of a penal statute, and especially of a section such as s. 111 of the Penal Code, and also to the necessary difficulty of questions as to the state of a man's mind at a particular moment, it could not, in the present case, be said that, because the accused knew of, and connived at, the intended robbery, they must be presumed to have foreseen that such excessive violence as was used was probable,—Empress v. Mathura Das, I. L. R., 6 All. 491. [Straight, Offg. C.J. June 27, 1884.] •

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, Abettor when liable to cumulative punishment for act and constitutes a distinct offence, the abettor is liaabetted, and for act done. ble to punishment for each of the offences.

Illustration.

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

Ruling.

A ENTERED the house of B without the latter's permission, and committed adultery with B's wife. Held that A could be separately convicted of, and punished for, both the adultery and house trespass, as they were distinct offences; but that, under the circumstances, B's wife was by law incapable of committing abetment of the house-trespass. Crown v. Sheikh Mungli, Panj. Rec., No. 5 of 1871.

Liability of abettor for effect caused by the act sbetted different from that intended by the abettor.

418. When an act is abetted with the intention on the part of the abet-Court by tor of causing a particular effect, and an act for which which offence the abettor is liable in consequence of the abetment able. causes a different effect from that intended by the Cog. if for ofabettor, the abettor is liable for the effect caused in fence abetted

the same manner, and to the same extent, as if he had abetted the act with the According as intention of causing that effect; provided he knew that the act abetted was likely warrant or to cause that effect.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes ted. grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abet. According as grevous nurt to Z. Z dies in consequence. Here, it A knew that the girevous nurt abed offence abetted was likely to cause death, A is liable to be punished with the punishment provided offence abetted is bailable for murder.

Ruling.

WHERE A ordered B and C to seize and forcibly take D in the contemplation of an poundable or assault upon D, and D was so beaten and tortured that he died, it was held that A was not. guilty at least of abetting the commission of voluntarily causing grievous hurt.—QUEEN W. DOORGESSUR SURMAH, 7 W. R. 97. [Hobhouse, J. April 30, 1867.]

114. Whenever any person who, if absent, would be liable to be punished as an abettor, is present when the act or offence for Abettor present when offence is committed. which he would be punishable in consequence of the abetmen: is committed, he shall be deemed to have committed such act or Offence. (as huncipal)

CHARGE.—" The charge should have set forth that, as the prisoner was present abetting the abduction of Mussamut Bhoola with intent that she might be compelled to marry against her will, he under s. 114 of the Penal Code committed the said abduction— of chace punishable under s. 366 of the Penal Code, and within," &c.—3 W. R., Cr. L., 9, No. 518 of 1865.

summons may issue for offence abet-

or not. According 88 abetoffence

Ditto.

In a case of bigamy and abetment of bigamy, the High Court observed that the woman (who was the principal) and the two men (who were the abettors) should have been charged in separate heads of the charge, since the former was charged actually with bigamy, and the latter as principals of the second degree by reason of their having been present, abetting the commission of that offence under s. 114 of the Penal Code.—5 W. R., Cr. L., 5. No. 243 of 1866.

How a Judge should charge the jury in a case of abetment, while present, of the forgery of a valuable document.—Queen v. Jehan Buksh, 5 W. R. 68. [Kemp and Setos-Karr, JJ. April 16, 1866.]

PRISONER was present at a murder without being aware that such an act was to be committed. Through fear, he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. Held that he was guilty not of abetment of murder, but of causing the disappearance of evidence of a crime under s. 201, Penal Code.—Reg. v. Goburdhun Bera, 6 W. R. 80. [Loch and Punglif,]]. Oct. 4, 1866.]

WHEN a prisoner kept watch at a door while a murder was being committed inside he should be charged under s. 114 (and not under s. 109) of the Penal Code, for it could hardly be said that the murder took place in consequence of such abetment.—6 W. R. Cr. L., 4, No. 1410 of 1866.

Where several prisoners were all concerned in a case of torture, and were prosecuting a common object, each was held guilty as a principal, and not as an abettor of others.—Queen v. Tarines Churn Chuttopadhya, 7 W. R. 3. [Kemp and Markby, JJ. Jan. 3, 1867.]

In order to bring a prisoner within s. 114 of the Penal Code, it is necessary first to make out the circumstances which constitute abetment, so that, "if absent," he would have been "liable to be punished as an abettor," and then to show that he was also present when the offence was committed.—QUEEN v. MUSSAMUT NIRUNI, 7 W. R. 49. []ackson and Glover,]]. Mar. 28, 1867.]

WHERE a Court finds that parties came with a number of armed men, and carried of a crop, the finding amounts to that of a forcible carrying off without the consent of the owner. Even if they took no part in the actual taking, they must, with reference to s. 114 Penal Code, be considered guilty of the substantive offence under s. 378.—QUEEN v. Shie Chunder Mundle, 8 W. R. 59. [Kemp and Glover, JJ. Aug. 5, 1867.]

According to s. 114 of the Penal Code, if the nature of the act constitutes abetment the abettor, if present, is to be deemed to have committed the offence, though in point of fact another actually committed it. S. 114 of the Penal Code simply provides for the punishment of what the English law calls principals in the second degree. A person pre sent, abetting an offence, is to be deemed to have committed the offence, though he doe not, in fact, do so any more than a principal in the second degree does. Hence, "all who are present aiding and assisting a man to commit a rape are principal offenders in the second degree, whether they be men or women" (1 Russ. 905); and hence Lord Audle (3 Howell's State Trials 401) was convicted as a principal of a rape on his own wife because he aided another to ravish her. There are several modes of abetment defined in the Penal Code. One is instigating another to commit an offence. If A instigates B to murder Z, he commits abetment; if absent, he is punishable as an abettor; and if the of Tence is committed, then under s. 109; if present, he is, by s. 114, to be deemed to have committed the offence, and is punishable as a principal. Another mode of abetment i by intentionally aiding, by any act or illegal omission, the doing of an offence. A aid B to murder Z; if absent, he is punishable as an abettor, and may be liable under \$\infty\$ 100 if present, then he is to be deemed as much to have committed the offence as if he had struck the fatal blow. The meaning of s. 114 is that, if the nature of the act done constitutes abetment, then, if present, the abettor is to be deemed to have committed the of fence, though in point of fact another actually committed it.—Pro., Mar. 8, 1869, 4 Mad. H. C. R., Ap. 37.

A YOUNG Brahman widow was confined of a child. The chief constable of police acting, as he stated, on information that the accused was about to kill a baby, went to search her house with a number of men, and found her lying on the first floor, and discovered on the second floor a living new-born child wrapped up in a cloth with a cooking pot turned over it. The Sessions Judge convicted the accused of attempt to murder. The High Court on appeal reversed the conviction, on the ground that the evidence was





insufficient to support it. It was also held in this case that the chief constable's statement, that the "had information that the accused was about to kill the baby," was most improperly admitted as evidence against the accused. Action of the police censured. When a person abets the commission of an offence, and is present at the time when it is committed, he should be tried, under s. 114 of the Penal Code, for the same offence as the principal.—Reg. v. Chima, 8 Bom. H. C. R. 164. [Gibbs and West, JJ. July 6, 1871.]

S. 114 (and not s. 149) was held to apply to a case where, upon a charge of mischief. by fire, the prisoner admitted that he was an abettor, and that he was present at the time the offence was committed.—QUBEN v. PEER MAHOMED, 17 W. R. 52. [Couch, C.]., and Ainslie, L. April 17, 1872.]

WHERE, by direction of Government, the Magistrate promulgated an order under s. 6a, Code of Criminal Procedure, directing all persons to abstain from hook-swinging, or other self-torture irr public, and from the abetment thereof, and no such order was upon the record, the High Court annulled the conviction of the prisoners by the Deputy Magistrate under ss. 188, 114. Penal Code, for having knowingly disobeyed that order.—IN THE MARTER OF DWARICK MISSER, 18 W. R. 30. [Kemp and Glover, J]. July 19, 1872.]

If an abettof of a crime is, on account of his presence at its commission, to be charged under s. 114 of the Penal Code as principal, his abetment must continue down to the time of the commission of the offence. If he distinctly withdraws at any moment before the final act is done, the offence is not committed with his continuing abetment.—REG. v. AMIRTA GOVINDA, 10 Bom. H. C. R. 497. [West and Nanabhai Haridas,]]. Dec. 17, 1873.

A was baptized in infancy into the Roman Catholic Church, but subsequently relapsed with the rest of her family into Hinduism, and was married to a Hindu. Her Hindu husband since discarded her, and alleged that he would not have married her if he had known that she had been baptized. A was subsequently re-admitted into the Roman Catholic Church, and married by B, a priest, to a Roman Catholic during the lifetime of her Hindu husband. Held that A's marriage with the Hindu was subsisting and valid at the time of her Christian marriage; that she was guilty of the offence of bigamy; and that B was guilty of abetting that offence. Lopes v. Lopes (I. L. R., 12 Cal. 706) discussed.

IN TE MPLIARD, I. L. R., 10 Mad. 218. [Collins, C.J., and Parker, J. April 1, 1887.]

115. Whoever abets the commission of an offence punishable with death Court by

Abetment of offence punishable with death or transportation for life, if offence not committed.

or transportation for life shall, if that offence be not which offence committed in consequence of the abetment, and no abetted is triexpress provision is made by this Code for the pun- Cog. if for ofishment of such abetment, be punished with impri- sence abetted

sonment of either description for a term which may extend to seven years, and According as shall also be liable to fine; and if any act for which the abettor is liable in warrant or

consequence of the abetment, and which causes hurt summons If act causing harm be done to any person, is done, the abettor shall be liable to may issue for offence abetimprisonment of either description for a term which may extend to fourteen ted. Not bailable. years, and shall also be liable to fine. According as

Illustration.

Ainstigates B to murder Z. The offence is not committed. If B had murdered Z, he poundable or would have been subject to the punishment of death or transportation for life. Therefore not. A is liable to imprisonment for a term which may extend to seven years, and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116. Whoever abets an offence punishable with imprisonment shall, if that Court by

Abetment of offence punishable with imprisonment, if consequence of abetment.

offence be not committed in consequence of the abet- which offence ment, and no express provision is made by this Code abetted is trifor the punishment of such abetment, be punished Cog. if for ofwith imprisonment of any description provided for fence abetted

that offence for a term which may extend to one-fourth part of the longestierm According as provided for that offence, or with such fine as is provided for that offence, or warrant or

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may issue for with both; and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, If abettor or person abet-According as duty it is to prevent offence. the abettor shall be punished with imprisonment of any description provided for that offence for a term ted is bailable which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

- (a.) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.
- (b.) A instigates B to give false evidence. Here, if B does not give, false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.
- (c.) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.
- (d.) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

Rulings.

Case of offering a bribe to a juryman. Although what passed between the prisoner and the juryman might not have amounted to an offer of a bribe to the latter, yet it was held to be so when taken in connection with what passed between the prisoner and the juryman's brother.—Queen v. Bawool Chunder Biswas, I W. R. 36. [Kemp and Glaver, JJ. Dec. 7, 1864.]

THE conviction of a procuress changed from abduction to enticing, the woman alleged to have been abducted having been of mature age and a free agent. The conviction of the other prisoners also changed from abetting wrongful concealment under s. 368 of the Penal Code to abetment under s. 116.—QUEEN v. SRIMOTEE PODDEE, 1 W. R. 45. [Kemp and Glover, JJ. Dec. 16, 1864.]

THE prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before the Deputy Magistrate on a charge of defamation. Held that this was abetiment of giving false evidence in a stage of a judicial proceeding, and was triable before a Court of Session only.—In re ANDY CHETTY, 2 Mad. H. C. R. 438. [Frere and Innes, JJ. Aug. 12, 1865.]

WHERE a constable and others enter a house, and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others.—Govt. v Mahomed Hos-SEIN, 5 W. R. 49. [Norman and Campbell,]]. Mar. 5, 1866.]

A POLICE Magistrate has power to convict summarily, under Act IV. of 1866 (B.C.). s. 26, for an offence punishable under s. 116 of the Penal Code.—QUEEN v. MAHBUB KHAN, 1 B. L, R., O. Cr., 39. [Norman, J. Aug. 12, 1868.]

WHERE the accused was charged under s. 116, Penal Code, with having abetted the commission of an offence punishable under s. 161 of that Code, the person abetted having been a Civil Surgeon of a Sadr Station, it was held that the enhanced imprisonment prescribed by the latter part of s. 116 could not be awarded, as the Civil Surgeon was not a public servant within the words of the section, "whose duty it is to prevent the commission of such offence."—QUEEN v. RAMNATH SURMA BISWAS, 21 W. R. Q. [Phear and Morris, JJ. Nov. 18, 1873.]

Accused was convicted by the Magistrate of abetting the kidwapping of a minor. Accused, knowing that the minor had left home without the consent of his parents, and at the instigation of one Komaren, the actual kidnapper, undertook to convey the minor to Kandy in Ceylon, and was arrested on the way thither. The Sessions Judge reversed the conviction on the ground that there was no concert between the accused and Komaren

whom to the completion of the kidnapping by the latter. Held by the High Court le, so long as the process of taking the minor out of the keeping of his lawful guardian claused, the offence of kidnapping might be abetted, and that, in the present case, the aviction should be of an offence punishable under ss. 363 and 116 of the Penal Code.—
Samia Kaundan, I. L. R., 1 Mad. 173. [Morgan, C.J., and Innes, J. Dec. 5,

117. Whoever abets the commission of an offence by the public generally, Court by

Abetting the commission of infence by the public, or by pre than ten persons.

or by any number or class of persons exceeding ten, which offence shall be punished with imprisonment of either de- abetted is triscription for a term which may extend to three years, Cog. if for ofor with fine, or with both.

Illustration.

A affixes in a public place a placard, instigating a sect, consisting of more than ten summons uniters, to meet at a certain time and place for the purpose of attacking the members of may issue for radverse sect white engaged in a procession. A has committed the offence defined in offence abethis section.

Ruling.

In a reference to the High Court the question was whether an abetment of breach According scontract by more than 10 persons was an abetment of the nature meant in s. 114 of the offence abet-The reply of the High Court was as follows: "The prisoners in this case ted is compear to have abetted 12 coolies in breaking their several contracts; and the Court's opi-not. ris requested whether, inasmuch as 12 exceeds 10, this is an abetment under s. 117, ich, it is presumed, is the section intended, and not s. 114. The Court are of opinion at the offence described is not an abetment under s. 117, Penal Code. The offence abetmust have been committed by more than 10 persons; whereas in the case under re-made each breach of contract is a separate offence under s. 492 by each coolie, so that shearent of such breach cannot be punished under s. 117, not withstanding that more no coolies broke contracts in consequence of such abetment.—3 W.R., Cr. L., 24, No. g of 1865.

Loccesting a design to comk an offence.

Pacishable with death cr rassportation for life—

M offence committed;

If not committed.

118. Whoever, intending to facilitate, or knowing it to be likely that he Court by will thereby facilitate, the commission of an offence which offence punishable with death or transportation for life, volun- abetted is transportation for life, volun- able. tarily conceals, by any act or illegal omission, the ex- Eog. if for ofistence of a design to commit such offence, or makes fence abetted my representation which he knows to be false respecting such design, shall, cog. if that offence be committed, be punished with impri- warrant or sonment of either description for a term which may summons may issue for extend to seven years; or, if the offence be not committed, with imprisonment offence abetof either description for a term which may extend ted. to three years; and in either case shall also be lia. Not bailable, According as ble to fine.

Illustration.

Library is about to be committed at B, falsely informs the Magistrate not. hat a facoity is about to be committed at C, a place in an opposite commission of the offence.

The Magistrate with intent to facilitate the commission of the offence.

A is punishable under this sec scoity is about to be committed at C, a place in an opposite direction, and thereby decory is committed at B in pursuance of the design. A is punishable under this section.

Rulings.

Rulings.

Rulings.

Recovering of a design to commit a dacoity, and voluntarily concealing the existence with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the knowledge that such concealment would facilitate the commission with the conce

fence abetted cog. According

ted. According offence abetted is bailable or not

offence abetted is compoundable or

Held that the prisoner could not be punished under s. 118, as there was no omision of an act which he was bound to perform which facilitated the commission of an offering but that he should be convicted under s. 176, Penal Code, as he was bound to re under s. 44. Code of Criminal Procedure, 1882, after he was informed of the robberg GOVT. v. KESREE, 1 Agra H. C. R. 37. [Turner, J., and Spankie, Offg. J. Dec. 21, 18

In Madras four prisoners were indicted for, and convicted of, murder; and the prisoner, who was the wife of the murdered man, was tried for, and convicted of, an offer under s. 118 of the Penal Code. The High Court upheld the conviction, as there evidence to show that the woman knew of the design to murder her husband, and concess it from him.-Referred Case, 30 of 1868.

Court by which offence abetted is triable. fence abetted ventcog. According warrant or summons ted. According offence ted is bailable or not. According 25 offence abetted is com-

not.

1

119. Whoever, being a public servant, intending to facilitate, or known Public servant concealing design to commit offence Cog. aif for of- which it is his duty to pre-

If offence committed;

If offence punishable with if offence not committed.

it to be likely that he will thereby facilitate, the con mission of an offence, the commission of which it his duty as such public servant to prevent, when tarily conceals, by any act or illegal omission, as existence of a design to commit such offence, or makes any representati which he knows to be false respecting such design shall, if the offence be committed, be punished wit offence abet-imprisonment of any description provided for the offence for a term white may extend to one-half of the longest term of such imprisonment, or with su fine as is provided for that offence, or with both; or, if the offence be punis able with death or transportation for life, with death; &c. Thankerlaten prisonment of either description for a term white

may extend to ten years: * or, if the offence be a committed, shall be punished with imprisonment poundable of any description provided for the offence for a term which may extend to the offence for a term whi fourth part of the longest term of such imprisonment, or with such fine at provided for the offence, or with both,†

Illustration.

A, an officer of police, being legally bound to give information of all designs to con mit robbery which may come to his knowledge, and knowing that B designs to come robbery, omits to give such information, with intent to facilitate the commission of offence. Here A has, by an illegal omission, concealed the existence of B's design, is liable to punishment according to the provision of this section.

Ditto.

Concealing design to commit (ffence punishable with imprisonment-If offence committed;

If not committed.

120. Whoever, intending to facilitate, or knowing it to be likely the he will thereby facilitate, the commission of offence punishable with imprisonment, voluntari conceals, by any act or illegal omission, the istence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence committed, be punished with imprisonment of the description provided for the offence for a term white may extend to one-fourth, and, if the offence be not committed, to one eighth, the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

*Court by which offence abetted is triable. Cog. if for offence abetted cog. At cording as warrant or summons may issue for offence abetted. Not bailable. According as offence abetted is compoundable or not.

† Court by which offence abetted is triable. Cog. if for offence abetted cog. Accord ing as warrant or summons may issue for offence abetted. According as offence abett is bailable or not. According as offence abetted is compoundable or not.

ing of war, against Queen.

S. 200 of the Penal Code contemplates that the act abetted should be committed in massquence of the abetment. The term "fabrication" in s. 193 refers to the fabrication at false documentary evidence to be used in a suit, so that to convict under this section. it is essential to aver and to prove that the fabricated documents were intended for that purpose. The illegal concealment, by act or omission, contemplated by s. 120 of the Code has reference to the existence of a design on the part of third persons to fabricate evidence.—QUEEN v. RAJ COOMAR BANERJEE, 1 Ind. Jur., O. S., 105. [Trevor and Seton-Karr, JJ. Sep. 27, 1862.]

CHAPTER VI.

There can court ale try
1898. 082 -

Not comp. Sanction.

Of Offences against the State.

Se. 12/ + 122 121. Whoever wages war against the Queen, or attempts to wage such Ct. of Ses. Waging or attempting to ished with death or transportation for life, and shall Warrant. vage war, or abetting wag-

forfeit all his property. Illustrations.

(a.) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(b.) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Oucen.

Rulings.

CHARGE.—That you, on or about the day of , at , waged war againsts Her Majesty the Queen-Empress of India, and thereby committed an offence punishable under s. 121 of the Indian Penal Code, and within the cognizance of the Court of Session when the charge is framed by a Presidency Magistrate, for Court of Session substitute High Court]. And I hereby direct that you be tried by the said Court on the said charge.

THE special limitation of the period for prosecution (three years) in cases of treason and misprision of treason under Stat. 7 Wm. III., c. 3, s. 5, is an exception to the general rule in criminal cases; and, in enacting s. 121 of the Penal Code, the Legislature has not bought fit to limit in any way the period within which a prosecution for an offence against that exactment may be commenced, and consequently such limitation does not form part of the Penal Code. In a case in which the accused was charged with abetting the waging of war against the Queen under s. 121 of the Penal Code, it was held that the Calcutts Gasette and the Gasette of India were admissible in evidence, under s. 8 of Act II. of 1855, to prove the proclamation and official communications of the Government relating to the war. A printed official letter from the Secretary to the Government of the Panjab to be Secretary to the Government of India was held to be admissible in evidence under i. 6, Act II. of 1855. S. 200 relates only to the oral evidence of witnesses. As to documentary evidence, although a prisoner has a right to have all or any part of any document seed on his trial translated or interpreted to him, yet, where a document is put in for the surpose of merely giving formal proof of that which is an incontestable fact, it is not neressary to interpret it at length. It would be sufficient if the prisoner was made to unlerstand what the document was, and for what purpose it was used. Quære, whether, with tee to s. 28 of Act II. of 1855, a prisoner charged with treason can be convicted on the evidence of a single witness?—QUEEN v. AMEEROODDEEN, 15 W. R. 25; 7 B. L. R. 53. [Norman, Offg. C.J., and Bayley, J. Feb. 25, 1871.]

THE proceedings before a Magistrate preliminary to commitment are not impeachable for irregularity, because some of the depositions were taken before the accused persons were brought before him. The Sessions Court at Patna was held to have jurisdiction to try the offence of abetment of waging war against the Queen, though the waging of war tid not take place in Patna, the rule of law as to abetment being that where parties concert tagesther, and have a common object, the act of one of the parties done in furtherance of the common object, and in pursuance of the concerted plan, is the act of the whole. The jurisdiction of the Sessions Court at Patna was not affected by the erroneous state-

These 121,124,124+1,125

ment in the charge of the abetment having taken place at Calcutta, when the evidence was sufficient to show the abetment at Patna; such erroneous statement being an error or defect in the charge which is cured by s. 426 of the Code of Criminal Procedure. The ise of a warrant of commitment by the Governor-General in Council, under Reg. III. of 1848 cannot be treated in the nature of a conviction of the person so placed under personal re straint, so as to give immunity to the person so committed, and afterwards discharged from all political offences committed before that period, on the ground that he has already been tried, convicted, and punished. The rule of evidence that letters found in the house of a person after his arrest, and whilst in custody, cannot be used in evidence, is subject to the exception that the existence of the letters found may be established either by direct proof or by strong presumptive evidence.—QUEEN v. AMEER KHAN, 17 W. R. 15;9 B. [Couch, C.J., and Jackson and Macpherson, JJ. Dec. 21, 1871.]

EDERY person, whether within or without the presidency-towns, aware-of the commis sion of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code (namely), 121, 121A, 122, 223, 124, 124A 125, 126, 130, "143, 144, 145, 147, 148," 302, 303, 304, 382, 392, 393, 394, 395, 396, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwall give information to the nearest Magistrate or police officer of such commission or isten tion.—Crim. Pro. Code (Act X. of 1882), s. 44, as amended by Act X. of 1894, s. 1.

Ct. of Ses. Uncog. Warrent Not bailable. Not comp. Sanction.

121A. † Whoever, within or without British India, conspires to commit any of the offences punishable by section 121, or u Conspiracy to commit offences punishable by section deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten vears.

ofe it

Explanation.—To constitute a conspiracy under this section, it is not neces sary that any act or illegal omission shall take place in pursuance thereof.

THE terms "disaffection" and "disapprobation" explained, and s. 124A referred to and explained to the jury.—QUERN-EMPRESS v. JOGENDRA CHUNDER BOSE, I. L. R., 19 Cal. 35. [W. Comer Petheram, Kt., C.J. Aug. 15, 1891.]

Ditto.

122. Whoever collects men, arms, or ammunition, or otherwise prepare Collecting arms, &c., with the intention of waging war against Queen.

all his property.

to wage war with the intention of either waging being prepared to wage war against the Queen, shall be punished with transportation for life or imprison ment of either description for a term not exceeding ten years, and shall forlet

the Council of any Presidency, to exercise or refrain

Ditto.

128. Whoever, by any act or by any illegal omission, conceals the existence of a design to wage war against the Queen, intend Concealing with intent to ing by such concealment to facilitate, or knowing facilitate a design to wage

to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Ditto.

124. Whoever, with the intention of inducing or compelling the Go vernor-General of India, or the Governor of any Pro Assaulting Covernor-Genesidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, ord

ral, Governor, &c., with intent to compel or restrain the exercise of any lawful power.

The figures quoted have been inserted by Act X. of 1894, s. 1.

[†] This is a new section, inserted by Act XXVII. of 1870, s. 4.

nº exercising in any manner any of the lawful powers of such Governorneral, Governor, Lieutenant-Governor, or Member of Council, assaults or mefully restrains, or attempts wrongfully to restrain, or overawes, by means criminal force or the show of criminal force, or attempts so to overawe such vernor-General, Governor, Lieutenant-Governor, or Member of Council, shall punished with imprisonment of either description for a term which may exd to seven years, and shall also be liable to fine.

, with the inten-CHARGE.—That you, on or about the day of of inducing the Honourable A. B., Member of the Council of the Governor-General ndia, to restrain from exercising a lawful power as such Member, assaulted such Memand thereby committed an offence punishable under s. 124 of the Indian Penal Code, within the eognizance of the Court of Session [or High Court] .- Crim, Pro. Code K. of 1882), sch. v., form XXVIII. (i).

124A*. Whoever, by words, either spoken or intended to be read, or by Ct. of Ses. signs, or by visible representation, or otherwise, Warrant. Aciting disaffection. excites or attempts to excite teelings of disaffection Not bailable, the Government established by law in British India, shall be punished with Not comp. asportation for life or for any term, to which fine may be added, or with im- Sanction, sonment for a term which may extend to three years, to which fine may be ded, or with fine.

Explanation.—Such a disapprobation of the measures of the Government s compatible with a disposition to render obedience to the lawful authority. the Government, and to support the lawful authority of the Government ainst unlawful attempts to subvert or resist that authority, is not disaffection. erefore, the making of comments on the measures of the Government, with intention of exciting only this species of disapprobation, is not an offence hin this clause.

125. Whoever wages war against the Government of any Asiatic power in alliance or at peace with the Queen, or attempts Vaging war against Asiato wage such war, or abets the waging of such war, power in alliance with shall be punished with transportation for life, to ich fine may be added, or with imprisonment of either description for a term ich may extend to seven years, to which fine may be added, or with fine.

Ditto.

Punishment for the offence of waging war with an Asiatic power in alliance with Queen.-QUEEN v. KEIFA SINGH, 3 W. R. 16. [Jackson and Glover, J]. May 19,

APPLICATION for pardon or mitigation of punishment for a political offence (e.g., ging war against a power in alliance with the Queen) should be made to the Executive remment.—Queen v. Sajowpa, 7 W. R. 64. [Seton-Karr, J. May 6, 1867.]

126. Whoever commits depredation, or makes preparations to commit depredation on depredation, on the territories of any power in allitories of power at peace ance or at peace with the Queen, shall be punished Queen. with imprisonment of either description for a term ch may extend to seven years, and also be liable to fine and to-forfeiture my property used, or intended to be used, in committing such depredation, ecquired by such depredation.

Ditto.

89

This is a new section, inserted by Act XXVII. of 1870, s. 5.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp. Receiving property taken by war or depredation mentioned in sections 125, 126.

Receiving property taken taken in the commission of any of the offences man toned in sections 125, and 126, shall be punished with imprisonment of either description for a term which man are seven and shall also be liable to fore a term.

with imprisonment of either description for a tension which may extend to seven years, and shall also be liable to fine and to feiture of the property so received.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp. Sanction. Public servant voluntarily prisoner or prisoner of war, voluntarily allows sur allowing prisoner of State or war in his custody to escape:

tion for life, or imprisonment of either description for a term which may extent to ten years, and shall also be liable to fine.

Ct. of Ses.
Presy. Mag.,
or Mag. of
1st class.
Uncog.
Warrant,
Bailable.
Not comp.
Sanction.

129. Whoever, being a public servant, and having the custody of asty Stepublic servant negligently suffers supprisoner of State or war in his custody to escape with simple imprisonment for a term which may extend to three years, as shall also be liable to fine.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp. Sanction. Aiding escape of, rescuing, or harbouring such prisoner who has escaped from lawful custody, or escues attempts to offer any resistance to the recapture of such prisoner, shall in punished with transportation for life, or with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State prisoner or prisoner of war who is permitted to at large on his parole within certain limits in British India is said to escape fro lawful custody if he goes beyond the limits within which he is allowed to be large.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY AND NAVY.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

Abetting mutiny, or attempting to seduce a soldier or sailor from his duty.

Abouting mutiny, or attempting to seduce a soldier or sailor from his duty.

Sailor in the army or navy of the Queen, or attempting to seduce any such officer, soldier, or sailor from allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term whim may extend to ten years, and shall also be liable to fine.

Explanation.—In this section the words "officer" and "soldier" including person subject to the Articles of War for the better government of E Majesty's army, or to the Articles of War contained in A& No. V. of 1869.

Ditto.

Abetment of mutiny, if mutiny is committed in consequence of that abetment of the Queen, shall, if mutiny is committed in consequence of that abetment be punished with death or with transportation is

Embering promise [90]

This explanation has been added by Act XXVII. of 1870, s. 6.

CHAP. VA.] OFFENCES AGAINST PUBLIC TRANQUILLITY. [SECS. 133-130.

is of imprisonment of either description for a term which may extend to ten ears, and shall also be liable to fine.

Abetment of assault by idier of sailor on his super officer when in gxecum of his office.

183. Whoever abets an assault by an officer, soldier, or sailor in the army Ct. of Ses., or navy of the Queen, on any superior officer being Presy. Mag., in the execution of his office, shall be punished with class. imprisonment of either description for a term which Cognizable. may extend to three years, and shall also be liable Warrant.
Not bailable. to fine.

184. Whoever abets an assault by an officer, soldier, or sailor in the army Ct. of Ses. or navy of the Queen, on any superior officer being Cognicable. Abetment of such assault, or navy of the Queen, on any superior of the Warrant in the execution of his office, shall, if such assault be Not bailable. The assault is committed. primitted in consequence of that abetment, be punished with Imprisonment Not comp. t either description for a term which may extend to seven years, and shall also liable to fine.

185. Whoever abets the desertion of any officer, soldier, or sailor in the Presy. Mag. army or navy of the Queen, shall be punished with or Mag. of 1s f Abetment of desertion of Moder or sailor. imprisonment of either description for a term which or and class. may extend to two years, or with fine, or with both.

Cognizable. Warrant. Bailabler

186. Whoever, except as hereinafter excepted, knowing and having reason Not comp. to believe that an officer, soldier, or sailor in the army Hasbouring deserter. or navy of the Queen, has deserted, harbours such ficer, soldier, or sailor, shall be punished with imprisonment of either descripha for a term which may extend to two years, or with fine, or with both.

Exception.—This provision does not extend to the case in which the subour is given by a wife to her husband. Cf. 5 4 1/2

187. The master or person in charge of a merchant-vessel, on board of Presy. Mag. which any deserter from the army or navy of the or Mag. of 1st Deserter concealed on board erchant-vessel through neg-Queen is concealed, shall, though ignorant of such or 2nd class. geoce of master. concealment, be liable to a penalty not exceeding Uncog. we hundred rupees, if he might have known of such concealment, but for some Bailable. regiect of his duty as such master or person in charge, or but for some want Not comp. of discipline on board of the vessel.

188. Whoever abets what he knows to be an act of insubordination by Presy. Mag. between of act of insubormation by soldier or sailor. Queen, shall, if such act of insubordination be com- or and class. pitted in consequence of that abetment, be punished with imprisonment of either Cognizable. escription for a term which may extend to six months, or with fine, or with both. Bailable.

Not comp.

Application of foregoing ections to the Indian Marine Ervice.

188A.* The foregoing sections of this chapter shall apply as if Her Majesty's Indian Marine Service were comprised in the navy of the Queen.

189. No person subject to any Articles of War for the army or navy of the Queen, or for any part of such army or navy, is Persons subject to Articles subject to punishment under this Code for any of be offences defined in this chapter.

^{*} This is a new section, inserted by the Indian Marine Act (XIV. of 1887), s. 79.

Sacs. 140, 141.] OFFENCES AGAINST PUBLIC TRANQUILLITY. [CHAP.VIII.

Any Mag. Cognizable. Summons. Bailable. Not comp.

ce.p.e.

140. Whoever, not being a soldier in the military or naval service of the Wearing dress of soldier.

Queen, wears any garb, or carries any token, resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to these months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

141. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, the Leagislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; of,

Second.—To resist the execution of any law or of any legal process; or,

Third.—To commit any mischief or criminal trespass, or other offence; or,

Fourth.—By means of criminal force, or show of criminal force, to say operson, to take or obtain possession of any property, or to deprive any passes of the enjoyment of a right of way, or of the use of water, or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or,

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.

THE common object of the assembly should always be mentioned in the charge.— 4 W. R., Cr. L., 9, 10, Nos. 1137 and 1150 of 1865.

In order to convict of the offence of being members of an unlawful assembly, it must be shown that the accused were actuated by a common object, and that the acts done by them were of such a nature as to make them guilty under s. 141 of the Penal Code.—QUEEN v. DINOBUNDO RAI, 9 W. R. 19. [Seton-Karr and Markby, JJ. Feb. 20, 1868.]

An assembly, lawful in its inception, may become unlawful by its acts. If force is used, the higher offence of rioting has been committed.—QUEEN v. KHEMEE SINGM I W. R. 18. [Kemp. J. Sep. 26, 1868.]

WHERE the defendants, raiyats of portion of a zamindari sold in execution of a decree of the Civil Court, reaped and carried away their crops despite the purchaser's people, and refused to allow the purchaser's people to seal and mark grain which had been reaped, and the raiyats were assembled in such numbers and so armed that nothing could be done against them, held by the High Court that the acts of the defendants did not amount to an offence under s. 141 of the Penal Code.—Pro., Aug. 10, 1869, 4 Mad. H. C. R., Ap., 65.

WHERE, of several persons constituting an unlawful assembly, some only are armed with sticks, and A, one of them, is not so armed, but picks up a stick, and uses, it, B (the master of A), who gave a general order to beat, is guilty of abetting the assault thade by A.—QUEEN v. RASOOKOOLLAH, 12 W. R. 51. [Glover and Mitter, JJ. Sep. 2, 1869.]

SHAP. VIII.] OFFENCES AGAINST PUBLIC TRANQUILLITY. [Sec. 941

! The act of the defendants in assembling and forcibly interrupting a procession was forbidden by cl. 4 of s. 141 of the Penal Code, although the defendants acted upon the ground that the procession was a nuisance or annoyance to them or their community.—Pro., Nov. 16, 1863, 5 Mad. H. C. R., Ap., 6.

WHERE two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly, and to try them together, inasmuch as they do not have "one common object" within the meaning of s. 141 of the Penal Code.—Queen v. Surroop Chunder-Paul, 12 W. R. 75. [Norman and Kemp, J]. Dec. 10, 1869.]

Held that the owner or occupier of land on which an unlawful assembly is held cannot be convicted under s. 154 of the Penal Code, unless there is a finding that the riot was premeditated. Where two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly, and to try them together, inasmuch as they do not have "one common object" within the meaning of s. 141 of the Penal Code The right of an accused party to cross-examine witnesses is limited to a right to cross-examine the witness for the prosecutor or for the Crown called against him. If he wishes to avail himself of evidence which has been given, or which can be given by a witness called for another of the paxies accused, he must call him as his own witness.—Queen v. Surroop Chunder Paul, 12 W. R. 75. [Norman and Kemp, J]. Dec. 10, 1869.]

WHERE a police-officer duly appointed under Act V. of 1861 was engaged, in the discharge of his duty as such police-officer, at a time when an unlawful assembly took place, it was held that he was competent to apprehend any of the members of such unlawful assembly; and a person who rescued the party apprehended was convicted of rescuing from lawful custody within the meaning of s. 225 of the Penal Code.—QUEEN v. ASSAM SHURBUFF, 13 W. R. 75. [Phear and Mitter,]]. May 17, 1870.]

PROCEDURE to be observed in the case of a charge under s. 154, Penal Code, against the owner of land on which an unlawful assembly is held, pointed out. The record of the original riot case is no evidence in the case under s. 154.—In the Matter of C. G. D. Betts and Mahomed Ismail Chowdhry, 15 W. R. 6; 6 B. L. R., Ap., 83. [Bayley and Mitter, J. Jan. 21, 1871.]

THERE is no ground for the distinction between an unlawful assembly as a premeditated act and an affray as a sudden one, for, according to s. 141 of the Penal Code, an assembly, which was not unlawful when it assembled, may subsequently become an unlawful assembly.—In the Matter of Lokenath Kar, 18 W. R. 2. [Bayley and Mitter]]. May 13, 1872.]

It cannot be said that a person intentionally joins an unlawful assembly, or continues in it, when it appears from the evidence that he went to the place where the members of the unlawful assembly were gathered to prevent mischief being done to his own property which he had a right to protect.—BIRJOO SINGH v. KHUB LALL, 19 W. R. 66. [Couch, C.J., and Glover, J. April 16, 1873.]

In this case, in which the prisoners were convicted of being members of an unlawful assembly under s. 141 of the Penal Code, the Court held that the evidence was insufficient to warrant a conviction, there being nothing to show what was the specific unlawful object, within the scope of cls. 3 and 4, of the persons composing the assembly.—In the Matter of Roylash Chunder Dass, 20 W. R. 78. [Phear and Morris, J]. Nov. 18, 1873.]

No charge of being members of an unlawful assembly under s. 141, Penal Code, can be sustained where the intention of the parties was, not to enforce a right or supposed right, but to maintain undisturbed the actual subsisting enjoyment of a right which was at that time being exercised.—Shunker Singh v. Burmah Mahto, 23 W. R. 25. [Phear and Morris, J]. Jan. 22, 1875.]

IF a number of persons, assembled for any lawful purpose, suddenly quarrel with an intruder without any previous intention or design, they do not commit "riot" in the legal sense of the word.—Khaja Noorue Hossein alias Khaja Waheed Jan v. Fabretonner, 24 W. R. 26. [Glover and Mitter, J]. July 12, 1875.]

A PARTY of persons, consisting of some five peadas and a number of coolies sufficient for the work to be done, went to a spot on a river flowing through the lands of M for the purposes of either repairing or erecting a bund across it to cause the water to flow down a channel on the lands of their master T. The river at the time was almost dry, and the party did not go armed ready to fight or use force, and they did not, during the subsequent

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occurrence, use force. Having arrived at the spot about 10 A.M., they proceeded to work at the bund until the afternoon. At about 4 P.M., a body of men, consisting of the 1,200 in all, many of them armed with lathis, and headed by the prisoners, who were the vants of M, which had been seen collecting together during the day, proceeded to the sput and about 25 or 30 of them attacked T's men, some five of whom were more or ten severely wounded with the lathis. The occurrence resulted in the conviction of some of M's servants for rioting under s. 147 of the Penal Code. M's people wholly denied any right on the part of T to construct or repair the bund, and had previously denied the esistence of such right, and refused permission to T to exercise it. It was contended that the assembly of M's people was not an "unlawful assembly;" that the interference by T's people with the channel of the river justified them in coming to stop the worle and the show and use of force in compelling them to do so. Held that the prisoners had been rightly convicted. Held, further, that as no right of private defence of property is conferred by the Penal Code, except as against the perpetrators of offences under the Penal Code, and that as, upon the facts of the case as found, no offence had been committed by T's people, their acts amounting merely to a civil trespass, and that, as there was no preing or immediate necessity of a kind showing that there was not time to have recourse to the protection of the public authorities, no question as to the right of private defence arose in the case. It was further contended that M's people did not assemble to enforce a right, or supposed right, within the terms of s. 141 of the Penal Code, but to defend a right, and that such action did not make the assembly an unlawful one. Held that they were members of an assembly the common object of which was, by show of criminal force, and by criminal force, if necessary, to enforce the right to keep the river channel clear by preventing the construction of the bund, and by demolishing it so far as it was constructed, and that the case came within s. 141, para. 4.—Queen v. Mitto Sing (3 W. R., Cr., 41), Shunker Singh v. Burmah Mahto (23 W. R., Cr., 25), and Birjoo Singh v. Khub Lall (19 W. R., Cr., 66), referred to and commented on.—GANOURI LAL DAS v. QUERN-EMPRESS, I. L. R., 16 Cal. 206. [Pigot and Macpherson,]]. Jan. 14, 1889.]

ONE of two village-factions objected to the other passing in procession over a vacuate piece of ground in the main street of the village. An injunction prohibiting the procession was obtained in the Court of the District Munsif on 20th March. On 11th lay a procession was formed, and approached the ground in question. Forty-six members of the first-named faction were assembled there to prevent the procession by force; the police ordered them to disperse; this order having been neglected, the police provailed on the other faction to abandon the procession. Held that the persons who did not disperse on being ordered to do so were guilty of the offence of being members of an unlawful assembly.—Queen-Empress v. Tira Kadu, I. L. R., 14 Mad. 126. [Muttusami Ayyar and Best,]]. Oct. 3, 1890.]

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

RIGH A LARGE body of men belonging to one faction waylaid another body of men belong ing to a second faction, and a fight ensued, in the course of which a member of the first mentioned faction was wounded, and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed Held by Norman, J. (whose opinion prevailed), that the wounded man had ceased to be member of the unlawful assembly when he retired wounded, and that he could not, unde s. 149 of the Penal Code, be made liable for the subsequent murder. Held by E. Jacks J., that he remained a member of the unlawful assembly. In delivering judgments N man, J., made the following important remarks: "The evidence shows that, on retreat of the Kazis, and before the renewal of the combat in which Baber Ali Mira killed, the prisoner Wahid Ali had separated himself from his faction, and sat down up from them. He probably no longer had the same common object as the members of unlawful assembly from which he had separated himself. It does not appear that he continued to urge on the others. He was apparently solely occupied by his own suf He cannot be convicted under s. 149, unless he was a member of the unlawful sembly at the time of the committing the offence. We think the fair inference from facts is that he had ceased to be so when the fatal wound was inflicted on Baber Ali Min and therefore that he cannot be convicted or punished for an act committed by a memi

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of that assembly under s. 149. It is plain that he was no longer co-operating with the others, and he had not the power to prevent or check the violence of the others as he might have had if he continued with them."—QUEEN v. KABIL KAZI, 3 B. L. R., A. Cr., 1 Norman and Jackson, JJ. April 8, 1869.

IT cannot be said that a person intentionally joins an unlawful assembly, or continues in it, when it appears from the evidence that he went to the place where the members of the unlawful assembly were gathered to prevent mischief being done to his own property, which he had a right to protect.—BIRJOO SINGH v. KHUB LALL, 10 W. R. 66. [Couch, C.J., and Glover, J. April 16, 1873.

148. Whoever is a member of an unlawful assembly shall be punished with imprisonment of either description for a term Cognizable. Punishment. . which may extend to six months, or with fine, or Summons. with both.

Not comp.

THE common object of the assembly should always be mentioned in the charge.-4 W. R., Cr. L., 9, 10, Nos. 1137 and 1160 of 1865.

There cannot be a conviction both of "rioting" and of "being members of an illegal assembly." The greater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. Were both original sentences legal, the appeal would lie to the Sessions Judge.—MEBLAN KHALIFA v. DWARKA NATH GOOPTO, 1 W. R. 7. [Kemp and Glover, J]. Aug. 17, 1864.]

An assembly, lawful in its inception, may become unlawful by its acts. If force is used, the higher offence of rioting has been committed.—QUEEN v. KHEMEE SINGH, I W. [Kemp, J. Sep. 26, 1864.]

To convict a prisoner of being a member of an unlawful assembly and of culpable homicide not amounting to murder, it must be shown that he had an illegal object in common with, and took part in the illegal act done by, the others.—FAIZ ALI alias INDAD ALI, I W. R. 20. [Loch and Glover,]]. Nov. 4, 1864.]

In an affray respecting land, one of the aggressive party was killed. The prisoners, who were exercising the right of private defence of property, were acquitted by the jury of colpable homicide, but convicted of rioting. *Held* that the prisoners, not being legally guilty of culpable homicide, were not legally guilty of any other offence coupled with rioting, and, not being rioters, or members of an unlawful assembly, could claim the benefit of s. 104, Penal Code.—Queen v. Mitto Singh, 2 W. R. 41. [Seton-Karr and Campbell, JJ. July 11, 1865.

House-trespass and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly armed with deadly weapons, no separate convictions and sentences were deemed to be req uisite —QUEEN v. SURROOP NAPIT, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 15, 1865.]

Held by the majority that, where two members of an unlawful assembly use spears, and deliberately pierce another man through the chest and abdomen, with the knowledge that death is likely to ensue, although without proof of any intention to cause death, all the members of the unlawful assembly are jointly guilty of murder.—QUEEN v. NAZOO FAKER, 4 W. R. 26. [Kemp, Seton-Karr, and Campbell, JJ. Nov. 27, 1865.]

A SUBORDINATE Magistrate of the first class has no power, under s. 45 of the Code of Criminal Procedure, to award any greater sentence of imprisonment in default of a payment of fine than six weeks in the case of persons convicted of being members of an unlawful assembly.—Phoolman Tewary v. Satram Ojha, 6 W. R. 51. [Norman and Seton-Karr, JJ. July 30, 1866.]

THE prisoner was convicted and sentenced separately for culpable homicide not amounting to murder, and for being a member of an unlawful assembly. The two offences, however, being held to be one (the latter being only part of the evidence of the former), the conviction and sentence for the second offence were quashed.—QUEEN v. RUBBEROOL-LA, 7 W. R. 13. [Norman and Seton-Karr, JJ. Jan. 16, 1867.] See contra Queen v. Hurgobind, 3 N.-W. P. 174, infra, p. 103.

WHERE persons join an unlawful assembly for the purpose of committing an assault, and, instead of preventing those armed from using their weapons, encourage them to do so, they are in the same position as those members of the unlawful assembly who struck the blows.—Queen v. Dushruth Roy, 7 W. R. 58. [Glover, J. April 18, 1867.]

CASE of an unlawful assembly the members of which were held guilty of an offence under s. 402 of the Penal Code on their own admission that they not only knew that the assembly was an assembly for the purpose of committing dacoity, but also that all the persons (including themselves) constituting the assembly lived on the proceeds of dacoity, and had no other means of living.—QUKEN v. KENDRA KAMAR, 7 W. R. 61. [Hobbouse, J. April 30, 1867.]

In a case of riot, in which a man was killed, the whole of the members of the unlawful assembly, as well the victorious as the worsted, were held equally guilty of culpable homicide not amounting to murder.—QUEEN v. Mana Singh, 7 W. R. 67. [Kemp and Glover,]]. May 7, 1867.]

In order to convict of the offence of being members of an unlawful assembly, it was be shown that the accused were actuated by a common object, and that the acts done by them were of such a nature as to make them guilty under s. 141 of the Penal Code.—Queen v. Dinobundo Rai, 9 W. R. 19. [Seton-Karr and Markby, J]. Feb. 20, 1368.]

A LARGE body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the firstmentioned faction was wounded, and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was kill Held by Norman, J. (whose opinion prevailed), that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not under s. 149 of the Penal Code, be made liable for the subsequent murder. Held by E. Jackson, J., that he remained a member of the unlawful assembly. In delivering judgment, Norman, J., made the following important remarks: "The evidence shows the on the retreat of the Kazis, and before the renewal of the combat in which Baber A Mira was killed, the prisoner Wahid Ali had separated himself from his faction, and down apart from them. He probably no longer had the same common object as the members of the unlawful assembly from which he had separated himself. It does not appear that he had continued to urge on the others. He was apparently solely occupied by his own suffering. He cannot be convicted under s. 149, unless he was a member of the unlawful assembly at the time of the committing of the offence. We think the fair inference from the facts is that he had ceased to be so when the fatal wound was inflicted on Babet Ali Mira, and therefore that he cannot be convicted or punished for an act committed by a member of that assembly under s. 149. It is plain that he was no longer co-operating with the others, and he had not the power to prevent or check the violence of the others as he might have had if he continued with them."—QUEEN v. KABIL KAZI, 3 B. L. R. •A. Cr., 1. [Norman and Jackson, J]. April 8, 1869.]

Where land in the possession of A was encroached on by the servants of B, who committed mischief on the land, and the servants of A assembled and resisted the encroachments, the High Court declined to interfere with the Magistrate's order convicting the servants of A of unlawful assembly, as there was no error in law in the order of the Magistrate, who found as a fact that the right of defence of private property had ceased under cl. 4, s. 105, of the Penal Code.—Queen v. Rajkristo Doss, 12 W. R. 43. [Kemp and Markby, JJ. Aug. 3, 1869.]

Where the defendants, raivats of portion of a zamindari sold in execution of a decree of the Civil Court, reaped and carried away their crops despite the purchaser's people and refused to allow the purchaser's people to seal and mark grain which had been reaped, and the raivats were assembled in such numbers and so armed that nothing could be done against them, held by the High Court that the acts of the defendants did not amount to an offence under s. 141 of the Penal Code.—Pro., Aug. 10, 1869, 4 Mad. H. C. R., Ap., 65.

WHERE, of several persons constituting an unlawful assembly, some only are afmedwith sticks, and A, one of them, is not so armed, but picks up a stick and uses it, B (the master of A), who gave a general order to beat, is guilty of abetting the assault made by A.—QUEEN v. RASOOKOOLA, 12 W. R. 51. [Glover and Mitter,]]. Sep. 2, 1869.]

THE act of the defendants in assembling and forcibly interrupting a procession was forbidden by cl. 4 of s. 141, although the defendants acted upon the ground that the procession was a nuisance or annoyance to them or their community.—Pro., Now. 11, 1869, 5 Mad. H. C. R., Ap., 4.

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WHERE the evidence in a case failed to establish anything like an unlawful assembly, the conviction was reduced from rioting and being members of an unlawful assembly to one for affray, although grievous hurt from which death resulted was caused to one of the persons. The insufficiency of the punishment allowed by the law in cases of affray pointed out.—QUEEN v. PHOOLEE MISSER, 12 W. R 72. [Jackson and Markby, J]. Nov. 30, 1869.]

Held that the owner or occupier of land on which an unlawful assembly is held cannot be convicted under s. 154 of the Penal Code, unless there is a finding that the riot was premeditated. Where two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly, and to try them together, inasmuch as they do not have "one common object" within the meaning of s. 141 of the Penal Code. The right of an accused party to cross-examine witnesses is limited to a right to cross-examine the witness for the prosecutor or for the Crown called against him. If he wishes to avail himself of evidence which has been given, or which can be given by a witness called for another of the parties accused, he must call him as his own witness.—QUERN V. SURROOP CHUNDER PAUL, 12 W. R. 75. [Norman and Kemp, J]. Dec. 10, 1860.]

WHERE a number of persons, members of an unlawful assembly, went to abduct A, and one of them killed B in the attempt to abduct A, keld that all the persons concerned in the attempt at abduction were guilty (looking to s. 149 of the Penal Code) of causing the death of B.—Queen v. Golam Arfin, 13 W. R. 33; 4 B. L. R., A. Cr., 47. [Lochand Hobhouse, J]. Feb. 19, 1870.]

Where a police-officer, duly appointed under Act V. of 1861, was engaged in the discharge of his duty as such police-officer at a time when an unlawful assembly took place, it was held that he was competent to apprehend any of the members of such unlawful assembly; and a person who rescued the party apprehended was convicted of rescuing from lawful custody within the meaning of s. 225 of the Penal Code.—Queen v. Assam Shurbuff, 13 W. R. 75. [Phear and Mitter, J]. May 17, 1870.]

PROCEDURE to be observed in the case of a charge under s. 154, Penal Code, against the owner of land on which an unlawful assembly is held, pointed out. The record of the original riot case is no evidence in the case under s. 154.—In the Matter of C. G. D. Betts and Mahomed Ismail Chowdhry, 15 W. R. 6; 6 B. L. R., Ap., 83. [Bayley and Mitter, J]. Jan. 21, 1871.]

A CUMULATIVE sentence under s. 143 of the Penal Code (being a member of an unlawful assembly) and under s. 353 (using criminal force against a public servant) was upheld by the High Court in this case.—Govind Chunder Roy, 16 W. R. 63. [Bayley and Paul, J]. Nov. 25, 1871.]

THERE is no ground for the distinction between an unlawful assembly as a premeditated act and an affray as a sudden one, for, according to s. 141 of the Penal Code, an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.—Lokenath Kar, 18 W. R. 2. [Bayley and Mitter, J]. May 13, 1872.]

Ir cannot be said that a person intentionally joins an unlawful assembly, or continues in it, when it appears from the evidence that he went to the place where the members of the unlawful assembly were gathered to prevent mischief being done to his own property, which he had a right to protect.—BIRJOO SINGH v. KHUB LALL, 19 W. R. 66. [Couch, C.J., and Glover, J. April 16, 1873.]

Held (Ainslie, J., dissenting) that s. 149 of the Penal Code is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. In order to bring a case within s. 49, the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the offence, though committed in prosecution of the common object of the unlawful assembly, is one which the accused knew would be likely to be committed in prosecution of the common object. Per Jackson, J.—Any offence done by a member of an unlawful assembly in prosecution of the particular one or more of the five objects mentioned in s. 141, which is or are brought home to the unlawful assembly to which a prisoner belongs, is an offence within the meaning of the first part of s. 149. Where a certain number of persons, members of an unlawful assembly (party A), attacked another party (B), who were in occupation of land, with the view to drive them off the land by force, and one of the members in

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party A fired a gun at and killed one of the persons in party B, in consequence of a suden and unexpected resistance which was offered by party B, it was held (Ainslie, J. senting), on a consideration of the evidence, that the persons composing party A, each than the person who fired the gun, could not be convicted of murder under s. 149, Code. The conviction was altered under the circumstances to one of rioting armed and adeally weapon under s. 148 of the Penal Code.—QUEEN v SABID ALI, 20 W.R. \$128 B. L. R. 347. [Couch, C.J., and Jackson, Phear, Ainslie, and Pontifex, JJ. April 21, 1873.]

In this case, in which the prisoners were convicted of being members of an unix with assembly under s. 141 of the Penal Code, the Court held that the evidence was insufficient to warrant a conviction, there being nothing to show what was the specific unlawful object, within the scope of cls. 3 and 4, of the persons composing the assembly. Koylet Chunder Dass, 20 W. R. 78. [Phear and Morris, J]. Nov. 18, 1873.] .

In a case in which the accused were charged with unlawful assembly and trespass, the Magistrate acquitted the accused, but eventully ordered the parties to execute hands and furnish security, refusing to take further evidence, and relying on the evidence which had been given before him in the original case in the presence of the accused. Held the the proceedings were irregular. The order was accordingly set aside.—Diloo Singh & Ootim Singh, 22 W. R. 9. [Kemp and Birch, JJ. April 25, 1874.]

No charge of being members of an unlawful assembly under s. 141, Penal Code, can be sustained, where the intention of the parties was, not to enforce a right or supposed right, but to maintain undisturbed the actual subsisting enjoyment of a right which was at that time being exercised.—Shunker Singh (the Panchgachia party), Petitioners; Burka Mahto (the Amba party), Petitioners, 23 W. R. 25. [Phear and Morris,]]. Jan. 22, 1875.]

• Where the officer in charge of a police-station required the officer in charge of another police-station to cause a search to be made in a house within the limits of his station, and such officer, on being required, deputed two offigers subordinate to him to make the search without delivering to them the order in writing required by s. 379 of Act & state 1872, it was held that the persons resisting the search attempted could not be lawfully convicted under ss. 353 and 143 of the Penal Code.—Queen v. Narain, 7 N.-W. P. 203. [Turner, J. April 13 1875.]

In a case in which the accused was bound down to keep the peace, the Assistant Magistrate admitted as evidence the depositions of witnesses in certain cases in which the accused was tried on charges of being a member of an unlawful assembly and of rioting, and was acquitted. Held that the Assistant Magistrate ought not to have admitted this evidence.—Queen v. Dina Bundhoo Roy, 24 W. R. 4. [Markby and Morris,]]. May 10, 1875.]

Where a charge under the Penal Code, s. 342 (wrongful confinement), was substantiated against certain prisoners, the Joint-Magistrate was held not to have been justified in treating the case as one of unlawful assembly (s. 143), and disposing of it summarily under the Code of Criminal Procedure, s. 222.—HARAN SHEIKH v. RAMDHUN BISWAS, 24 W. R. 21. [Glover and Mitter, J]. June 28, 1875.]

If a number of persons, assembled for any lawful purpose, suddenly quarrel with an intruder without any previous intention or design, they do not commit "riot" in the legal sense of the word.—Khaja Noorul Hossein alias Khaja Waheed Jan v. Fabre-Tonnerre, 24 W. R. 26. [Glover and Mitter, JJ. July 12, 1875.]

WHERE, after the object of an unlawful assembly had been accomplished, and the opposite party driven away, one of the members entered into an altercation with another, and wounded him with a fish-spear, it was held that the act was not one done with a view to accomplish the common object of the assembly, or one which the rest knew would be likely to be committed in the prosecution of that object.—In the Matter of Binod, 24 W. R. 66. [Kemp and Glover, J]. Nov. 17, 1875.]

THE offence of rioting consists in the use of violence by an unlawful assembly, or by any member thereof, in the prosecution of the common object. But as in this case there were never five per sons assembled together to constitute an unlawful assembly, and the intention to use force does not appear to have been carried out, no offence under the Penal Code is established against the accused.—In the Matter of Ramadeen Doobay, 26 W. R. 6. [Markby and Mitter, J]. Aug. 17, 1876.]

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If a body of men armed with lathis, and under the leadership of one who, to the knowledge of the rest, is armed with a gun, assemble for the purpose of forcibly carrying off another man's property, and if, in effecting that purpose, any one of the party, taking the gun, shoots and kills a person who is making a lawful resistance, the whole party may properly be convicted of murder, under s. 149 of the Penal Code.—HARI SING v. EXPRESS, 3.C. L. R. 49. [Jackson, Mitter, and Maclean, J]. June 4, 1878.]

To constitute an offence under s. 157 of the Penal Code, it must be proved that the accused has hired, or engaged, or employed other persons for the purpose of an unlawful assembly, and it is not sufficient to show that some of the accused's servants have been taken from a district where men have a well-known character as lathials, and had been in his service some time before the riot was perpetrated. A non resident partner or sharer, who has taken we active part in the management of the estate, cannot, like a resident sharer, beconvicted under ss. 154 and 155 of the Penal Code.—In the Matter of Radhanath Chowdhry, 7 C. L. R. 289. [Mitter and Maclean J]. Sep. 9, 1880.]

A DISTURBANCE having been created with reference to the possession of certain chur land, the Sessions Judge on appeal found that certain persons had unlawfully trespassed thereupon, and that the accused had been justified in resisting the trespassers by force. Inasmuch, however, as he considered the accused had exceeded their right of private defence of their property, he convicted them of rioting under s. 148 of the Penal Code. Held that, on the findings of the Judge, the conviction could not be supported, inasmuch as on such findings the persons convicted were not members of an unlawful assembly.—IN THE MATTER OF KALEE MUNDLE, 10 C. L. R. 278. [Mitter and Maclean, JJ. Feb. 21, 1852.]

Where the object of only three persons was to draw a crowd, and their action was such as was calculated to, and did, draw a crowd of fifty or sixty persons likely to cause a disturbance of the public peace, held that the gathering constituted an assembly of five or more persons within the meaning of s. 151 of the Penal Code, and that a refusal to disperse after being lawfully commanded to disperse rendered every member of the gathering liable to conviction under the said section.—Empress v. Tucker, I. L. R., 7 Bom. 42. [Kemball and Pinhey, JJ. Sep. 28, 1882.]

On the trial of certain persons charged with being members of an unlawful assembly, it was proved that there was a dispute of long standing between the accused and certain other parties regarding the possession of certain land; that neither of the parties was in undisturbed possession of the land; that the accused went to sow the land with indigo, accompanied by a body of men armed with lathis; that they were prepared to use force, if accessary; and that the lathials kept off the opposite party by brandishing their weapons while the land was sowed. Held that the accused were rightly convicted of being members of an unlawful assembly under s. 143 of the Penal Code. Sunker Singh v. Burmah Mahfo (23 W. R. 25) distinguished.—In the Matter of Perry Mohun Sircar v. Empress, I. L. R., 9 Cal. 639; 13 C. L. R. 80 [Wilson and Maclean, J]. Mar. 1, 1883.]

A MEMBER of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt.—EMPRESS v. RAM PARTAB, I. L. R., 6 All. 121. [Straight, J. Dec. 5, 1883.] Dissented from in Queen Empress v. Dungar Singh, I L. R., 7 All. 29, infra, p. 106.

FOUR persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon, who went with his warrant for his arrest accompanied by other persons, A and B, for the purpose of jdeatifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon and another by means of a dangerous weapon on A. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section, and two months' rigorous, imprisonment under the latter. He further convicted one of the accused of an offence under s. 324 in respect of the assault on A, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect, one on the expiry of the other. Held that the offence of rioting was completed by the assault on A, and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure. Held, further, that, even if A had not been assaulted, the

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conviction and sentences passed for rioting and the assault on the peon were legal, inasandch as the acts of the accused, taken separately, constituted offences under ss. 143 and 353 c the Penal Code, and, combined, an offence under s. 147; and under s. 235, sub-a 3 of the Code of Criminal Procedure, the accused might be charged with, and tried at one trial for, the offence under s. 147, and those under ss. 143 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code as amended by s. 4 of Act VIII. of 1882, which limit had not been exceeded in the present case.—In the MATTER OF CHANDRA KANT BHATTACHARJEE; CHANDRA KANT BHATTACHARJEE v. QUEEN-EMPRESS, I. L. R., 12 Cal. 495. [Mitter and Beverley, J]. Dec. 11, 1885.]

FISH in a public river cannot be said to be property in the possession of the person who may have the fishery-right, and the infringement of that right is not the francers. 378 of the Penal Code. The accused were charged with unlawfully taking fish along with some eleven others in a public river, the right of fishing in which had been let out by the Gov ment to the complainant; and the lower Court, amongst other offences, convicted them of that the conviction was wrong, and that no offence had been committed.—BHAGIRAM DONE TO ABAR DONE, I. L. R., 15 Cal. 388. [Norris and Gheen II]

One of two village-factions objected to the other passing in procession over a warm piece of ground in the main street of they illage. An injunction prohibiting the procession was obtained in the Court of the District Munsif on 20th March. On 11th May a procession was formed, and approached the ground in question. Forty-six members of the first-named faction were assembled there to prevent the procession by force; the police ordered them to disperse; this order having been neglected, the police prevailed on the other faction to abandon the procession. Held that the persons who did not disperse on being ordered to do so were guilty of the offence of being members of an unlawful assembly.—Queen-Empress v. Tira Kadu, I. L. R., 14 Mad. 126. [Muttusami Ayyar affd Best, JJ. Oct. 3, 1890.]

Any Mag. Cognizable. Warrant. Bailable. Not comp.

• 144. Whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause Joining unlawful assembly death, is a member of an unlawful assembly, shall armed with deadly weapon. be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

THE common object of the assembly should always be mentioned in the charge.—4 W. R., Cr. L., 9, 10, Nos. 1137 and 1150 of 1865.

HOUSE-TRESPASS and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly armed with deadly weapons, no separate convictions and sentences were deemed to be requisite.—QUEEN v. SURROOF NAPIT, 3 W. R. 54. [Kemp and Seton-Karr,]]. July 15, 1865.]

It is unnecessary to punish a prisoner under both s. 144 and s. 148 of the Penal Code, as the offence under s. 144 is almost merged in the offence under s. 148. There is, however, nothing actually illegal in sentencing for both offences.—SREEKISSEN v. JUGLAL, 9 W. R. 5. [Kemp and Jackson,]]. Jan. 13, 1868.]

SEPARATE sentences passed upon persons for the offences of rioting and grievous hurt are not legal where it is found that such persons individually did not commit any act which amounted to voluntarily causing hurt, but were guilty of that offence under s. 149 of the Penal Code.—Empress v. Ram Partab (I. L. R., 6 All. 121) approved. *Lobe Nath Sirkar v. Queen-Empress (I. L. R. 11 Cal. 349) overruled. - NILMONEY PODDAR . QUEEN-EMPRESS, I. L. R., 16 Cal. 442. [Petheram, C. J., and Mitter, Prinsep, Wilson, and Tottenham, JJ. Mar. 21, 1889.]

Joining or continuing in unlawful assembly, knowing

it has been commanded to disperse.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, of

with both.

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CARP. VIII.] OFFENCES AGAINST PUBLIC TRANQUILLITY. [SBCS. 146, 147.

* UNDER s. 127 of the the Criminal Procedure Code (Act X, of 1882), any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly,

148. Whenever force or violence is used by an unlawful assembly, or by Any Mag. any member thereof, in prosecution of the common Cognizable. object of such assembly, every member of such as-Bailable. Force used by one member in prosecution of common object. sembly is guilty of the offence of rioting.

Not comp.

D:

A MEMBER of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt.—EMPRESS v. RAM PROTAB, I. L. R., 6 All. 121. [Straight, J. Dec. 5, 1883.] Dissented from in Queen-Empress v. Dungar Singh, I. L. R. 7 All. 29, infra,

A LANDLORD, who had not tendered to his tenant such a pottah as the latter was bound to accept under the Madras Rent Recovery Act, distrained his cattle for arrears of rent, the assistance of the police having been procured for the purpose. The tenant, with the assistance of eleven other persons, forcibly obstructed the removal of the cattle, which had already been actually seized and driven for some yards. They were charged with the offence of rioting, and convicted. Held that the conviction was right.—Queen-Empress P. Ramayya, I. L. R., 13 Mad. 149. [Collins, C.J., and Parker, J. Oct. 2, 25, 1889.]

147. Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend Bunishment for rioting. to two years, or with fine, or with both.

Ditto.

A HUSBAND, or those who aided him, cannot be convicted of kidnapping for taking awayshis own wife; but they are guilty of rioting if they carry out the husband's object of getting possession of his wife by force and violence and in the darkness of night .-QUEEN V. ASKUR, W. R., Sp., 12. [Steer and Seton-Karr,]]. Feb. 22, 1864.]

THE prisoners, having been part of an assembly of more than five persons, whose common object, as apparent from their acts, was, by means of criminal force, to recover possession of their cattle seized for trespass (whether properly pounded or not), and who made use of such force and took away their cattle, were held guilty of rioting, and liable to conviction under s. 147 of the Penal Code, and not under s. 11, Act V. of 1857.— QUERN v. Вокоо Sheikh, W. R., Sp., 21. [Jackson, J. April 12, 1864]

THERE cannot be a conviction both of "rioting" and of "being members of an illegal assembly." The greater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. Were both original sentences legal, the appeal would lie to the Sessions Judge.—MEELAN KHALIFA v. DWARKA NATH GCOPTO, 1 W. R. 7. [Kemp and Glover, J]. Aug. 17, 1864.]

An assembly, lawful in its inception, may become unlawful by its acts. If force is used, the higher offence of rioting has been committed.—QUEEN v. KHEMEE SINGH, 1 W. R. 18. [Kemp, J. Sep. 26, 1864.]

In an affray respecting land one of the aggressive party was killed. The prisoners, who were exercising the right of private defence of property, were acquitted by the jury of enhanced by the convicted of rioting. Held that the prisoners, not being legally guilty of culpable hamicide, were not legally guilty of any other offence coupled with rioting, and, not being rioters, or members of an unlawful assembly, could claim the benefit of s. 104, Penal Code.—QUEEN v. MITTO SINGH, 3 W. R. 41. [Seton-Karr and Campbell, JJ. July 11, 1865.]

· HOUSE-TRESPASS and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly armed with deadly weapons, no sepashin convictions and sentences were deemed to be requisite.—QUREN v. SURROOP NAPIR, 3 W. R. 54. [Kemp and Seton-Karr,]]. July 15, 1865.] Upheld by Queen v. Kali Sanher Sandyal, 3 B. L. R., A. Cr., 14; 12 W. R. 2. But see illus. g to s. 235 of the

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Criminal Procedure Code (Act X. of 1882), which runs thus: "A, with six others de mits the offences of rioting, grievous hurt, and assaulting a public servant endersure in the discharge of his duty as such to suppress the riot. A may be separately than with, and convicted of, offences under ss. 147, 325, and 152 of the Indian Penal Cate."

DISPUTE between two parties (the Mollahs and Shikdars), in which the Shikars tacked and killed one of the Mollahs when exercising the right of retaking their was perty, three of the Shikdars being also wounded. The Shikdars were convicted of subplikation to mounting to murder and rioting. As to the Mollahs, Loch, J., was to opinion that they were guilty of voluntarily causing grievous hurt; while the majority of the Court held that they were entitled to the protection conferred by s. 101, Penal Code on those who, while exercising the right of private defence, caused their assailants any hand other than death—Queen v. Tanoo Shikdar, 3 W. R. 47. [Loch, Kemp, and Seton Karr, JJ. July 17, 1865.]

Held by the majority of the Court (Seton-Karr, J., dissenting) that an attack made in the morning by an unlawful armed assembly, with the object of rescuing two thieres who had been captured during the night, and in which murder was committed, was give meditated attack for which all concerned were liable to conviction for tiot attended with murder.—Queen v. Bhunjun Pauray, 4 W. R. 8. [Kemp, Seton-Karr, and Giver,] Sep. 12, 1865.]

A DISMISSAL by one Court of a charge of riot against A may be a bar to A's trially another Court on the same charge; but it does not extend to other persons not the before the Court which ordered the dismissal. The dismissal by one Court of the charge of riot instituted by the police is no bar to the trial by another Court of a charge of criminal trespass instituted by a third person, although the two charges may substantially series the same occurrences. There is no right of appeal, because the united sentences in three separate cases amount to more than a month's imprisonment.—Queen v. Morly Sheirs 6 W. R. 51. [Seton-Karr and Pundit, J]. Aug. 6, 1865.]

WHERE an affray took place, both parties turning out armed with deadly weapons it cannot be said that there was any right of private defence, as either party well known beforehand what was likely to happen. Where land was already sown with corn, and digo-factory had no right to attempt forcibly to sow indigo in it, although it was indigo contract land; and villagers had no right to oppose such forcible sowing by force, in much as the police-station was close by.—QUEEN v. [BOLALL, 3] Wyman's Rev., Chv., and Crim. Reporter 21; 2 Mad. Jur. 168. [Kemp and Glover, J]. Feb. 18, 1867.]

WHERE persons join an unlawful assembly for the purpose of committing an assembly and, instead of preventing those armed from using their weapons, encourage them to do so, they are in the same position as those members of the unlawful assembly who struct the blows.—QUEEN v. DUSHRUTH ROY, 7 W. R. 58. [Glover, J. April 18, 1867.]

In a case of riot, in which a man was killed, the whole of the members of the unlaw ful assembly, as well the victorious as the worsted, were held equally guilty of culpable homicide not amounting to murder.—QUEEN v. MANA SINGH, 7 W. R. 67. [Kemp and Glover, J]. May 7, 1867.]

WHERE a man is grievously wounded in a riot, the police are bound to act without taking into consideration who was the aggressing party. In the discharge of their duties and in the absence of any proof that they exceeded their duty, the police were held entitled to the protection of the Court.—Queen v. Damoo Singh, 8 W. R. 36. [Kemp and Glover, J]. July 8, 1867.]

THERE had been a riot and fight between two factions, and some members of one part (A) were charged with the murder of the leader of the other party (B), and some member of the other party (B) were charged with causing grievous hurt to the leader of party (A) Held that the members of each party should have been committed for trial separately, and that the Magistrate was wrong in committing the members of party (A) and of party (B) for trial all together upon joint charges as if they had had no one common object.—Quest v. Sheik Bazu, 8 W. R. 47; B. L. R., Sup. Vol., 750. [Peacock, C.J., and Loch Bayley, Kemp, Seton-Karr, Phear, and Macpherson, J]. July 27, 1857.]

WHERE prisoners are charged both with rioting, being armed with deadly weapons and with causing hurt by shooting, and their conviction of the latter offence rests solely on the fact of their belonging to a party by one of whom (not one of the prisoners) fire

thed, it is wrong to pass a cumulative sentence, and to punish the prisoners both ling and for the causing hurt. The punishment should be for either one or the offences. A charge should be so framed as to refer to the section of the funder which the offence charged is punishable as required by ss. 234 and 237 of Criminal Procedure. Where there is a riot and fighting between two factombers of each party should be committed for trial separately, and not all towards. Durzoolla, 9 W. R. 33. [Seton-Karr and Macpherson, J]. Mar. 14, contra, Queen v. Callachand, 7 W. R. 60, infra, p. 112.

ry in possession of land is legally entitled to defend his possession against anseeking to eject him by force. Therefore, where there was a charge against of rioting under s. 147, and both were convicted and punished, the High Court Sconviction, holding that the party in possession was protected by s. 104, Penal REN v. TOOLSEE SING, 2 B. L. R., Ap. Cr., 16; 10 W. R. 64. [Loch and Glover, 1, 1868.]

fal exising out of an affray or faction-fight, the members of each faction should trately. The statements of the members of each faction can then, if desired, solemn affirmation, and be made evidence against their opponents; but if they tive evidence on the ground of implicating themselves, they cannot be compel—QUEEN v. MAHOMED HOSSEIN, I N.-W. P. 293. [Pearson and Turner,]].

Iso.]
It land in the possession of A was encroached on by the servants of B, who imposses in the land, and the servants of A assembled and resisted the entity, the High Court declined to interfere with the Magistrate's order convicting of A of unlawful assembly, as there was no error in law in the order of the who found as a fact that the right of defence of private property had ceased s. 105 of the Penal Code.—Queen v. Rajkristo Doss, 12 W. R. 43. [Kemp., J]. Aug. 3, 1869.]

the defendants in assembling and forcibly interrupting a procession was by cl. 4 of s. 141, although the defendants acted upon the ground that the proa nuisance or annoyance to them or their community.—Pro., Nov. 11 1869, C. R., Ap., 4.

the evidence in a case failed to establish anything like an unlawful assembly, the was reduced from rioting and being members of an unlawful assembly to any, although grievous hurt from which death resulted was caused to one of the insufficiency of the punishment allowed by the law in cases of affray point term v. Phooles Misser, 12 W. R. 72. [Jackson and Markby. JJ. Nov. 30,

BE two opposite factions commit a riot, it is irregular to treat both parties as Legone unlawful assembly, and to try them together, inasmuch as they do not common object" within the meaning of s. 141 of the Penal Code,—QUKEN OF CHUNDER PAUL, 12 W. R. 75. [Norman and Kemp, JJ. Dec. 10, 1869.]

of the Code of Criminal Procedure does not authorize a Magistrate summarily person to remove a wall crected on land alleged to belong to another person in the of evidence showing that a riot or affray was likely to occur.—RADHAKISHORE MARKE SAHEE, 13 W. R. 19. [Loch and Hobhouse, JJ. Feb. 7, 1870.]

ONS found guilty of rioting may, if the circumstances warrant it, be convicted ral offences of rioting armed with deadly weapons, culpable homicide, and griev-QUEEN v. HURGOBIND, 3.N.-W. P. 174. [Turner, J. July 7, 1871.] See contra, Rubbeecollah, 7 W. R. 13, supra, p. 95.

RE the accused were convicted under s. 147 of the Penal Code of rioting, and also 83 of using criminal force to a constable who went to arrest them, the High side the conviction under the former section.—IN THE MATTER OF NILRUTTON W. R. 45. [Kemp and Ainslie, J]. Sep. 9, 1871.]

ccused person cannot be punished first on a charge for rioting, and afterwards for hurt, when the latter is included in the former. Per D. N. Mitter, J.—An Court is bound precisely in the same way as the Court of first instance to test extrinsically as well as intrinsically. Per Ainslie, J.—A Magistrate, as an execu-

tive officer, is not bound to attend to a Judge's extra-judicial observation not warren law.—In the Matter of Goomanee, 17 W. R. 59. [Mitter and Ainslie,]]. May

In a case of very serious riot, the rioters were acquitted by the Magistrate, beat thought they might have considered their act justified because the procession was by virtue of some orders, which did not appear, which might have been efficacious of law. Held that the thinking a thing legal which is not so can be no defence the who violates a rule of law; that there was no evidence that the procession was illustrated if it were, the accused were bound to invoke the aid of the tribunals charged the enforcement of the law.—Pro., Jan. 8, 1873, 7 Mad. H. C. R., Ap., 35.

Two parties were convicted of rioting. One party consisted of not less than sons, who were all found to have been assembled together in the fight which took and it was also found that they, as well as their opponents, came armed with strapared to fight, and did fight. Held that they were not improperly convicted of their common object being to assault their opponents. The other party only constitution persons. It was not found what object they had in common with the first partifight did not occur in a public place. Held that they were not properly convicting. Held, also, that, had the fight occurred in a public place, it might have been that the common object of both parties was to commit an affray.—Queen 2. Hossein, 5 N.-W. P. 208. [Pearson, J. July 5, 1873.]

UNDER Act V. of 1861, a police-officer is bound to communicate information superior officer regarding the commission of a riot affecting the public peace, and the an entry thereof in the diary which he is required by s. 44 of that Act to keep, and that sion to give such information brings him within the purview of s. 177 of the Pendson The Matter of Syed Futter Mahomed, 21 W. R. 30. [Kemp and Glasson, 17, 1874.]

• Where the only evidence for the prosecution was that of witnesses whom the cial Commissioner considered unworthy of belief, it was held that the prisoners, was charged with rioting, ought not to have been convicted on the statements of the party, who were also charged with rioting, such statements not being evidence accused in this case.—Queen v. Khukree Ooram, 21 W. R. 48. [Phear and J]. Mar. 11, 1874.]

It is necessary, before persons can be convicted of rioting, &c., under s. 147 or a Penal Code, to ascertain clearly that they have taken such a share in the transaction will bring them within the criminal charge; and it must appear on the evidence that had a common object, which common object they were going to carry out by unbust means.—Queen v. Gholam Mahomed, 22 W. R. 17. [Markby and Mitter, JJ. 1874.]

Where a charge of rioting was tried summarily by the Magistrate as one of mile and unlawful assembly, the Sessions Judge, relying on a case cited, submitted, at the quest of the accused, that the summary order may be set aside, and the accused tried for rioting under ch. 17 of the Criminal Procedure Code. The High Court decite to interfere at the instance of the accused persons, and distinguished this from the cited by the Sessions Judge, as the reference there was made by the Magistrate in the terests of public justice.—Queen v. Aboo Sheik, 23 W. R. 19. [Phear and Ainslie, Jan. 13, 1875.]

In a case in which the accused was bound down to keep the peace, the Assistant a gistrate admitted as evidence the depositions of witnesses in certain cases in which accused was tried on charges of being a member of an unlawful assembly and of right and was acquitted. Held that the Assistant Magistrate ought not to have admitted a evidence.—Queen v. Dina Bundoo Roy, 24 W. R. 4. [Markby and Morris, JJ. May 1875.]

If a number of persons, assembled for any lawful purpose, suddenly quarrel with intruder without any previous intention or design, they do not commit "riot" is a legal sense of the word.—Khajah Noorul Hossein alias Waheed Jan v. Fabra-Tonerre, 24 W. R. 26. [Glover and Mitter, JJ. July 12, 1875.]

THE offence of rioting consists in the use of violence by an unlawful assembly or any member thereof in the prosecution of the commou object. But as in this case the were never five persons assembled together to constitute an unlawful assembly, and

VIII.] OFFENCES AGAINST PUBLIC TRANQUILLITY. [Sec. 1476

to use force does not appear to have been carried out, no offence under the Code is established against the accused.—In the Matter of Ramadern Doobay, R. 6. [Markby and Mitter,]]. Aug. 17, 1876.]

THERE both parties were armed and prepared to fight, it is immaterial who is the first ick, unless it is shown that the party was acting within the legal limits of the right ste defence.—In the Matter of Kaler Bepares, t C. L. R. 521. [Jackson and Ingham, JJ. Mar. 5, 1878.]

BOTING and hurt in the course of such rioting are distinct offences, and each offence rately punishable.—Empress v. RAM ADHIN, 1.L.R., 2 All. 139. [Pearson, J. Feb.

The Court then took the evidence of the witnesses for the defence, and protocounter-case in the order named, and after hearing the accused, postponed the taking of the evidence for the defence, and protocounter-case in the order named, and after hearing the addresses of the rained took the evidence of the defence in the first and counter-case in the order named, and after hearing the addresses of the various to for the defence and the reply of the Government Pleader, proceeded to sum up to in both cases to the jury, who returned a verdict in respect of all the accused. The procedure resorted to by the Judge was a practical violation of the salutary that he accused the keeping of trials in such cases distinctly separate, and that the procedure resorted to by the Judge was a practical violation of the salutary that he accused the interest of the accused, the convictions having materially prejudiced the interest of the accused, the convictions he set aside. Held further [Queen v. Sheik Basu (B. L. R., Sup. Vol., 750; 8 W. distinguished] that the defect in the procedure could not be cured by the consent pleaders for the defence to the arrangement suggested by the Court.—Hossein w. Empress, I. L. R., 6 Cal. 96. [Morris and Prinsep, J]. June 24, 1880.]

p constitute an offence under s. 157 of the Penal Code, it must be proved that the has hired, or engaged, or employed other persons for the purpose of an unlawful y, and it is not sufficient to show that some of the accused's servants have been from a district where men have a well-known character as lathials, and had been in twice some time before the riot was perpetrated. A non-resident partner or sharer, has taken no active part in the management of the estate, cannot, like a resident be convicted under ss. 154 and 155 of the Penal Code.—In the Matter of Radha-Chowdhry, 7 C. L. R. 289. [Mitter and Maclean, J]. Sep. 9. 1880.]

THERE the accused had been convicted of riot under s. 148, and of grievous hurt under sof the Penal Code, the Sessions Judge on appeal held that the complainants had the penal code, the Sessions Judge on appeal held that the complainants had the penal code in the accused had merely exercised the right of pristence; but, inasmuch as they had not set up the pleasof private defence, he considered was not competent to him to set aside the conviction. Held that, on the finding Sessions Judge, the accused were entitled to an acquittal.—IN THE MATTER OF KALI MOOKERIEE, II C. L. R. 232 [Prinsep and O'Kinealy, J]. May 22, 1882.]

TLEA of right to possession is no answer to a charge of rioting by making a forcibacky on land cultivated by a trespasser who is in possession, and opposes the entry. Paravu v. Queen, I. L. R., 6 Mad. 245. [Innes, J. Dec. 12, 19, 1882.]

THERE a riot occurred, and complaints were lodged by both parties, the witnesses prosecution were in each case in turn examined-in-chief, then also in turn cross-tied, and in like manner re-examined, and the Court thereupon discharged the accused, and called upon the accused on the other to go into his defence. Held procedure adopted was improper, and that there should be a new trial. Empress Nath Sircar (I. L. R., 7 Cal. 65; 8 C. L. R. 352) followed. The provisions of the Criminal Procedure Code in no way affect the powers of the High Court as to of Revision vested in it by the High Courts Act.—In the Matter of Charonel 13, 1883.]

Margueur of an unlawful assembly, some members of which have caused grievous standard for the offence of rioting as well as for the offence of the grievous burt.—Empress v. Ram Partas, I. L. R., 6 All. 121. [Straight, J. Dec. Dissembed from in Queen-Empress v. Dungar Singh, I. L. R., 7 All. 29, infra.

[P. C. 15.]

The offences of rioting, of voluntarily causing hurt, and of voluntarily causing his ous hurt, each of the two latter offences being committed against a different pattern, at all distinct offences within the meaning of s. 35 of the Criminal Procedure Code. Under the first paragraph of s. 235 of the Criminal Procedure Code a person accused of radia and of voluntarily causing grievous hurt may be charged with and tried for each distant at one trial, and, under s. 35, separate sentence may be passed in respect of each. Queen Empress v. Ram Partab (I. L. R., 6 All. 121) dissented from.—Queen-Empress v. Dungan Singh, I. L. R., 7 All. 29. [Brodhurst, J. July 22, 1884.]

On the 8th August 1884, a Magistrate of the second class began an inquiry is a ca in which several persons were accused of rioting and voluntarily causing grievers in On the 6th September, the powers of a Magistrate of the first class were conferred and Magistrate by an order of Government, which was communicated to him on the 8th S tember. On the 9th September, the case for the prosecution having closed, the May framed charges against each of the accused under ss. 323 and 325 of the Penal Co corded the Statements of the accused and the evidence for the defence, and, on the September, convicted the accused of all the charges, passing upon each of them, in spect of each charge, sentences which he could pass as a Magistrate of the first ch could not have passed as a Magistrate of the second class. On appeal, the Sessions in on the ground that the prisoners had committed the offence described in s. 160 Penal Code, held that the sentences passed by the Magistrate were illegal, as being consistent with the provisions of s. 71, paras. 2 and 4; and he accordingly reduced sentences of imprisonment which the Magistrate had passed to the maximum of imprisonment. sonment which the Magistrate could have inflicted under s. 148 Held by the Fall B (Petheram, C.J., and Brodhurst, J., dissenting) that the sentences passed by the Magic trate were legal. Per Oldfield, Mahmood, and Duthoit, JJ., that, with reference to the terms of s. 39 of the Criminal Procedure Code, a Magistrate of the second class, who had begun a trial as such, and continued it in the same capacity up to the passing of and who, prior to passing sentence, has been invested with the powers of a Magistre the first class, is competent to pass sentence in the case as a Magistrate of the first class Per Oldfield and Duthoit, J.J., that the provisions of s. 71 of the Penal Code had no apply cation to the case, inasmuch as the offences of causing grievous hurt and hurt formed part of the offence of rioting. Per Petheram, C.J., that a case must be taken to be tried upon the day the trial commences; that, for all the purposes of the trial, the Magistrate this case retained the *status* of a Magistrate of the second class; and that he was the fore not competent to pass sentence as a Magistrate of the first class. Also per Pet ram, C.J., that the Judge in this case had no power to alter the charge, or to frame a m charge in any way. Per Brodhurst, J., that the sentences passed by the Magistrate we as a whole, illegal; that, if he had convicted the accused under s. 148 of the Penal Cod his order would, under the circumstances, have been legal; that a Court of Appeal is m competent to alter the finding of a Magistrate, so as to convict an accused person of offence which the Court of which the order is in appeal was not competent to try; that a member of an unlawful assembly, some members of which have caused grieve hurt, can be legally punished for the offence of rioting as well as for the offence of causing grievous hurt. Empress v. Dungar Singh (I. L. R., 7 All. 29), supra, referred to Queen-Empress v. Pershad, I. L. R., 7 All. 414. [Petheram, C.J., and Oldfiel Brodhurst, Mahmood, and Duthoit, JJ. Jan. 17, 1885.]

Three persons, who were convicted (i) of riot under s. 147 of the Penal Code, (ii) causing grievous hurt in the course of such riot, were respectively sentenced to six month rigorous imprisonment under s. 147, and three months' rigorous imprisonment under s. 147, and three months' rigorous imprisonment under s. 325. Held by Petheram, C.J., and Straight and Tyrrel, JJ., that, inasmuch as the of dence upon the record showed that the three prisoners had committed individual acts violence with their own hands, which constituted distinct offences of causing grievous had or hurt separate from, and independent of, the offence of riot, which was already complete and the fact of the riot was not an essential portion of the evidence necessary to establish their legal responsibility under s. 325 of the Penal Code, the separate sentences pass under ss. 447 and 325 were not legal. Queen-Empress v. Ram Partab (I. L. R., 6 A 121), supra, p. 105, distinguished. Per Brodhurst, J., that the evidence showed that on one of the three prisoners had caused grievous hurt with his own hands, and that the other could only be properly convicted of that offence under the provisions of s. 149 of the Pen Code, but that the separate sentences passed under ss. 147 and 325 were not illegal. Queen Empress v. Dungar Singh (I. L. R., 7 All. 29), supra, followed. Also per Brodhurs J. Ill. g. of s. 325 of the Criminal Procedure Code does not apply merely to the case

be some who, in addition to the offence of rioting, have, with their own hands, committed the further offences of voluntarily causing grievous hurt, and of assaulting a public servant liken engaged in suppressing a riot; and the convictions referred to in the illustration retwee specially to convictions obtained under the provisions of s. 149 of the Penal Code.—
TOTALLEMPRESS TO. RAM SARUP, I. L. R, 7 All. 757. [Petheram, C.J., and Straight, Broderst, and Tyrrell, JJ. May 12, 1885.]

Four persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execuon of a legal process, namely, the arrest of a judgment debtor by a Civil Court peon, to went with a warrant for his arrest accompanied by other persons, A and B, for the **Expose of identifying him, and with using force or violence in prosecution of the com**to object, such force or violence consisting of an assault on the Civil Court peon and tother by means of a dangerous weapon on A. The Deputy Magistrate convicted all e accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to a months' rigorous imprisonment under the former section, and two months' rigorous imprisonment ender the latter. He further convicted one of the accused of an offence s. 324 in respect of the assault on A, and sentenced him to one month's rigorous prisonment in respect of that offence, and directed that the sentences were to take effect he on the expiry of the other. Held that the offence of rioting was completed by the with on A, and that the assault on the peon was a further offence under the first sub-secin of s. 235 of the Code of Criminal Procedure. Held further, that, even if A had not en asmulted, the conviction and sentences passed for rioting and the assault on the peon we legal, inasmuch as the acts of the accused, taken separately, constituted offences under 1. 143 and 353 of the Penal Code, and, combined, an offence under s. 147; and under 135, sub-s. 3 of the Code of Criminal Procedure, the accused might be charged 1th, and tried at one trial for, the offence under s. 147, and those under ss. 143 and 353; atherefore also separately convicted and sentenced for each such offence, provided the sistement did not exceed the limit imposed by s. 71 of the Penal Code as amended by for Act VIII. of 1882, which limit had not been exceeded in the present case.—IN THE ATTER OF CHANDRA KANT BHUTTACHARJEE; CHANDRA KANT BHUTTACHARJEE v. With-Empress, I. L. R., 12 Cal. 495. [Mitter and Beverley, J]. Dec. 11, 1885.]

S. 149 of the Penal Code creates no offence, but was intended to make it clear that accused person whose case falls within its terms cannot put forward the defence that did not with his own hand commit the offence committed in prosecution of the comor object of the unlawful assembly, or such as the members of the assembly knew to likely to be committed in prosecution of that object. In prosecution of the common pect of an unlawful assembly, M with his own hand, caused grievous hurt. M and other mbers of the assembly, as to whom it did not appear whether or not any of them perbally used force or violence, were convicted of rioting under s. 147, and grievous hurt under s. 325 of the Penal Code, and were each sentenced to separate terms of imprisonment for each offence. The highest aggregate punishment, which was M's, was six best deported in the sentences. his hurt. Held that, assuming s. 71 of the Penal Code to be applicable, the sentences we not illegal, as the combined periods of imprisonment did not, in the case of any risoner, exceed the maximum punishment of seven years' rigorous imprisonment which could have been awarded for the offence punishable under s. 325. Held also that the to could not, in any of the cases, be considered a part of the offence under s. 325, that 71 did not apply, and that the sentences were legal. Queen-Empress v. Ram Parlab L.R., 6 All. 121) dissented from. Queen-Empress v. Dungar Singh (I. L. R., 7 All.), Queen-Empress v. Ram Sarup (I. L. R., 7 All. 767); Queen v. Rubbeeoollah (7 W. 13) slobe Nath Sarkar v. Queen-Empress (I. L. R., 11 Cal. 349), Queen-Empress v. bridad (I. L. R., 7 All. 414), Chandra Kant Bhuttacharjee v. Queen-Empress (I. L. R., Cal. 498), and Reg. v. Tukaya bin Tamana (I. L. R., 1 Bom. 214), referred to.—QUERN-🏧 🖚 Візнезная, І. L. R., 9 All. 645. [Edge, C.J., and Brodhurst, J. May 16, 1887.]

A, WITH Six others, commits the offences of rioting, grievous hurt, and assaulting a blicogreant endeavouring, in the discharge of his duty as such, to suppress the riot. A my be separately charged with, and convicted of, offences under ss. 147, 325, and 152 of he ladian Penal Code.—Crim. Pro. Code (Act X. of 1882), s. 235, illus. g.

A LARTY of persons, consisting of some five peadas and a number of coolies sufficient in the work to be done, went to a spot on a river flowing through the lands of M for the persons of either repairing or erecting a bund across it to cause the water to flow down a

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channel on the lands of their master T. The river at the time was almost dry, and party did not go armed ready to fight or use force, and they did not, during the subs occurrence, use force. Having arrived at the spot about 10 A.M., they proceeded to w at the bund until the afternoon. At about 4 P.M. a body of men, consisting of the 1,200 in all, many of them armed with lathis, and headed by the prisoners, who were sevants of M, which had been seen collecting together during the day, proceeded to the sp and about 25 or 30 of them attacked T's men, some five of whom were more or less severely wounded with the lathis. The occurrence resulted in the conviction of some of M's servants for rioting under s. 147 of the Penal Code. M's people wholly denied any right on the part of T to construct or repair the bund, and had previously denied the existence of such right, and refused permission to T to exercise it. It was contended that the assembly of M's people was not an "unlawful assembly," that the interference by Ts people with the channel of the river justified them in coming to stop the work and the show and use of force in compelling them to do so. Held that the prisoners had been rightly convicted. Held, further, that as no right of private defence of property is tagferred by the Penal Code, except as against the perpetrators of offences under the Penal Code, and that as, upon the facts of the case as found, no offence had been committed by T's people, their acts amounting merely to a civil trespass, and that, as there was no peasing or immediate necessity of a kind showing that there was not time to have recourse to the protection of the public authorities, no question as to the right of private defence arose in the case. It was further contended that M's people did not assemble to enforce a right, or supposed right, within the terms of s. 141 of the Penal Code, but to defend a right, and that such action did not make the assembly an unlawful one. Held that they were members of an assembly the common object of which was, by show of criminal large, and by criminal force if necessary, to enforce the right to keep the river channel clearly preventing the construction of the bund, and by demolishing it so far as it was constructed, and that the case came within s. 141, para. (4). Queen v. Mitto Sing (3 W. R. Cr., 41), Shunker Singh v. Burmah Mahto (23 W. R., Cr., 25), and Birjoo Singh v. Khub Lall (19 W. R., Cr., 66), referred to and commented on.—Ganouri Lal Das v. Queen En-PRESS, I. L. R., 16 Cal. 206. [Pigot and Macpherson,]], Jan. 14, 1889.]

SEPARATE sentences passed upon persons for the offences of rioting and givens hurt are not legal, where it is found that such persons individually did not commit asy act which amounted to voluntarily causing hurt, but were guilty of that offence under so. 149 of the Penal Code. Empress v. Ram Partab (I. L. R., 6 All. 121) approved. Like Nath Sarkar v. Queen-Empress (I. L. R., 11 Cal. 349) overruled.—NILMONEY PODDAR L. QUEEN-EMPRESS, I. L. R., 16 Cal. 442. [Petheram, C.J., and Mitter, Prinsep, Wilson and Tottenham, JJ. Mar. 21, 1889.]

Where several Hindus acting in concert forcibly removed an ex and two cows from the possession of a Muhammadan, not for the purpose of causing "wrongful gain" to themselves, or "wrongful loss" to the owner of the cattle, but for the purpose of plemening the killing of the cows, held that they could not properly be convicted of dacoity, but only of riot.—QUEEN-EMPRESS v. RAGHUNATH RAI, I. L. R., 15 All. 22. [Tyerd], J. Aug. 6, 1802.]

When a party is in possession of land for four or five days, though it may be in wrong ful possession, another party, although claiming to be the rightful owner, is not entitled to go in force to turn him out, much less is he entitled to take armed men with him for that purpose. In an affray specific evidence as to the acts of each fighter cannot be expected, but only general evidence as to the accused taking part in it, and persons who, a in this case, punted the boats on which the fight took place, and in whose interests the fight on the boats took place, were held to be just as blameworthy as the men who struct the blows.—Moher Sheikh v. Queen-Empress, I. L. R., 21 Cal. 392. [Trevelyan and Rampini, J]. Aug. 28, 1893.]

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailarle. Not comp.

Rioting, armed with deadly with anything which, used as a weapon of offence is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

THE offence of rioting armed with deadly weapons, and stabbing a person on whee premises the riot takes place, are distinct offences, and punishable as separate offences.

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mader ss. 148, 149, and 324 of the Penal Code, s. 149 being read as a provise to s. 148.—

Junuary. Callachand, 7 W. R. 60. [Norman and Seton-Karr, J]. April 29, 1867.] See

Instructional Gueen v. Durscola, 9 W. R. 33, supra, p. 103. Followed in Empress v. Ram Adhin,

L. B., 2 All. 139, supra, p. 105.

Fire a case of rioting with deadly weapons, the side found guilty of using them and ausing grievous hurt are properly punishable more severely than the men of the other ide.—Queen v. Moorut Mahton, 8 W. R. 3. [Kemp and Glover, JJ. June 3, 1867.]

THERE had been a riot and fight between two factions, and some members of one party [A) were charged with the murder of the leader of the other party (B), and some members it the other party (B) were charged with causing grievous burt to the leader of party (A). Must that the members of each party should have been committed for trial separately, and that the Magistrate was wrong in committing the members of party (A) and of party (B) for trial all together upon joint charges as if they had had one common object.—Queen s. Sheikh Bazu, 8 W. R. 47; B. L. R., Sup. Vol. 750. [Peacock, C. J., and Loch, Bayley, Kemp, Seton-Karr, Phear, and Macpherson, J.]. July 27, 1867.]

fr is unnecessary to punish a prisoner under both s. 144 and s. 148 of the Penal Code, as the offence under s. 144 is almost merged in the offence under s. 184. There is, however, nothing actually illegal in sentencing for both offences.—Sreekissen v. Jughal, W. R. 5. [Kemp and Jackson, JJ. Jan. 13, 1868.]

PRILD that, where the prisoners were charged under s. 148 of the Penal Code, of rioting armed with deadly weapons, and also under s. 324 of voluntraily eausing hurt by dangerous weapons, they should have been sentenced only under one or other of these actions, the charges being, properly speaking, only alternative charges. The High Court vehicle to interfere with the reception by the Sessions Judge of the uncorroborated evidence of accomplices.—Reg. v. Dina Sheikh, 10. W. R. 63; 3 B. L. R. 15 note. [Phear and, Hobhouse, JJ. Dec. 15, 1868.]

CERTAIN persons made a sudden attack upon the prisoners for the purpose of cutting their crops. The prisoners resisted, and, having no time to complain to the police, inflicted a wound upon one of the assailants with a bamboo, from the effects of which he afterwards died. The Sessions Judge convicted the prisoners under ss. 148 and 304. In appeal, the High Coart held that the force used and the injuries inflicted were not such as to exceed the right of private defence of property, and directed an acquittal.—QUEEN T. Gene Churn Chang, 6 B. L. R., Ap. Cr., 9; 14 W. R. 69. [Kemp and Glover, J]. Nov. fe. 1870.]

HELD (Ainslie, J., dissenting) that s. 149 of the Penal Code is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. In order to bring a case within s. 149, the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the offence, though committed in prosecution of the common object of the unlawful assembly, is one which the accused knew would be likely to be committed in prosecution of the common object. Per Jackson, J.: Any offence done by a member of an unlawful assembly, in prosecution of the particular one or more of the five objects mentioned in s. r4r, which is or are brought home to the unlawful assembly to which a prisoner belongs, is an effence within the meaning of the first part of s. 149. Where a certain number of persons, members of an unlawful assembly (party A), attacked another party (B), who were in occupation of land, with the view to drive them off the land by force, and one of the members in party A fired a gun at and killed one of the persons in party B in consequence of a sudden and unexpected resistance which was offered by party B. it was held (Ainslie, J., 'dissenting), on a consideration of the evidence, that the persons composing party A other than the person who fired the gun could not be convicted of murder under's. 149, Penal Code. The conviction was altered under the circumstances to one of rioting armed with a deadly weapon under s. 148 of the Penal Code.—Queen v. Sabid Ali, 20 W. R. 5; 11 B. L. R. 347. [Couch, C.], and Jackson, Phear, Ainslie, and Pontifex, JJ. April 21, 1873.]

No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration, and not to be believed. Therefore, a Magistrate, when he has before him a person charged with having been armed with

a deadly weapon while a member of an unlawful assembly, is not at liberty to disregate that part of the charge which charges the prisoner with having been armed with a deathy weapon, and so to give himself jurisdiction to try the case summarily, and then, by sefficting a sentence of imprisonment not exceeding three months, to deprive the prisoner of his right of appeal.—Empress v. Golam Mahomed; Empress v. Abbool Karesu, I. L. R., 4 Cal. 18; 3 C. L. R. 81. [White and Prinsep, J]. July 19, 1878.].

Where death results in a fight between two bodies of men deliberately fighting together, a greater proportion of the men composing both sides being armed with deadly weapons, and it being further apparent from the evidence that the man slain was an about, and that no unfair advantage was taken by the one side or the other during the fight, the offence committed is culpable homicide, but does not amount to murder.—Shameners Khan v. Empress, I. L. R., 6 Cal. 154; 7 C. L. R. 158. [Wiffte and Field, J. July 51, 1880.]

A DISTURBANCE having been created with reference to the possession of certain charland, the Sessions Judge on appeal found that certain persons had unlawfully trespassed thereupon, and that the accused had been justified in resisting the trespassers by berce. Inasmuch, however, as he considered the accused had exceeded their right of private defence of their property, he convicted them of rioting under s. 148 of the Penai Code. Held that, on the findings of the Judge, the conviction could not be supported, inasmuch as, on such findings, the persons convicted were not members of an unlawful assembly.—In the Matter of Kali Mundle, 10 C. L. R. 278. [Mitter and Maclean, J]. Feb. 21, 1882.]

The offences of rioting armed with a deadly weapon and voluntarily causing but with a dangerous weapon to two persons are distinct offences, and a person charged with such offences can be convicted and sentenced in respect of the rioting and of the bust caused to each of the persons injured. A and B were charged with rioting armed with deadly weapons under s. 148 of the Penal Code; and they were also charged under s. 324, coupled with s. 149, with causing hurt by a dangerous weapon to X; and B was further charged under s. 324 with causing a like hurt to Y, A being also charged under s. 324, boupled with s. 149, in respect of the hurt caused by B to Y. A and B were convicted on all charges, and separate sentences, to take effect in succession, were awarded an espect of each offence charged. The offences under s. 324 were committed during the riot. Held that the several acts with regard to which the prisoners were charged did not fall within the provisions of s. 71 of the Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that consequently, under s. 235 of the Criminal Procedure Code, the several sentences passed were strictly legal.—Loke NATH SARKAR v. Queen-Empress, I. L. R., 11 Cal. 349. [Tottenham and Ghose, J]. Mar. 6, 1885.]

SEPARATE sentences passed upon persons for the offencesof rioting and grievous hurt are not legal where it is found that such persons individually did not commit any act which amounted to voluntarily causing hurt, but were 'guilty of that offence under s. 149 of the Penal Code. Empress v. Ram Partab (I. L. R., 6 All. 121) approved; Loke Nath Sarkar v. Queen-Empress (I. L. R., 11 Cal. 349) overruled.—NILMONEY PODDAR S. Queen-Empress, I. L. R., 16 Cal. 442. [Petheram, C.J., and Mitter, Prinsep, Wilson, and Tottenham, JJ. Mar. 21, 1889.]

Eight persons, who were charged with a number of others, were tried on various charges consisting of rioting armed with deadly weapons (s. 148, Penal Code), assaulting or obstructing a public servant when suppressing a riot (s. 152), and voluntarily causing hurt and grievous hurt to deter a public servant from his duty (ss. 332 and 333). The common object set out in the charge was "to resist the execution of a decree obtained by Suresh Chunder Deb against Shaik Ali Yar in the Court of the Second Subordinate Judge of Alipore, dated 30th April 1891, and also by means of criminal force, or show of criminal force, to overawe the members of the police-force in the execution of their lawful powers as police-officers," and it was held that resistance to the police was one of the component parts of the offence of rioting charged. At the trial in the Court of Session all eight accused were convicted of the offence charged under s. 148, and each was sentenced to the maximum punishment allowed under that section, vis., three years' rigorous imprisonment. Seven out of the eight were convicted of offences under s. 152, and sentenced each to an additional term of two years' rigorous imprisonment for those offences. Two out of the seven accused were further convicted of offences under s. 332 of the Penal Code, the burt

herein charged being caused to police-officers-engaged in suppressing the riot, and each entenced to a further additional term of two years' rigorous imprisonment for that ffence. The eighth accused, who was not convicted of an offence under s. 152, was conicted of an offence under s. 333, the grievous hurt being similarly caused to a policeficer, and for that offence was sentenced to five years' rigorous imprisonment in addiion to the sentence of three years passed on him under s. 148. It was contended on appeal -(1) that the sentences passed under s. 152 in addition to those under s. 148 were illeal; (2) that separate sentences under s. 152 and ss. 332 and 333 were illegal; (3) that be cumulative sentences under s. 148 and ss. 332 and 333 were illegal in so far as they acceded the maximum sentence provided for either of the offences. Held, as regards 1), that as resistance to the police was one of the component parts of the offence rioting of which the accused were convicted and sentenced to the maximum punishment provided by s. 148, and having regard to the provisions of s. 71, the additional entences under s. 152 were illegal. Held further, that s. 152 contemplates an assault or bstruction to some particular public servant, and that as the charge against the accused s framed was merely to the effect that they assaulted and obstructed members of the police orce in the discharge of their duties, &c., the conviction under that section could not be Held as regards (2), that separate sentences under s. 152 and ss. 332 and 333 were illegal, as the hurt inflicted on the police-officers was the violence used towards them shich constituted the essence of the offence under s. 152. Held as regards (3), that the eparate sentences passed under s. 148 and ss. 332 and 333 were not illegal, there being nothing in s. 71 of the Penal Code which limits the amount of punishment that may be mposed for these offences.—Ferasat v. Queen-Empress, I. L. R., 19 Cal. 105. [Beverley and Ameer Ali, JJ. Nov. 9, 1891.]

THE question whether or not a lathi is a "deadly weapon" within the meaning of 148 of the Penal Code is a question of fact to be determined on the special circumstances of each case as it arises.—Queen-Empress v. Nathu, I. L. R., 15 All. 19. [Edge, C.J., and Tyrrell. J. July 27, 1892.]

Every member of unlawful assembly guilty of offence committed in prosecution of common object.

149. If an offence is committed by any member of an unlawful assembly Court by in prosecution of the common object of that assem- which offence bly, or such as the members of that assembly knew is triable.

According as to be likely to be committed in prosecution of that arrest may be object, every person who, at the time of the commit- made without

ing of that offence, is a member of the same assembly, is guilty of that offence. warrant for offence or not.

It is essential, under the above section, to state the common object of the unlawful According as assembly in prosecution of which an offence was committed by one member, so as to render summons all liable to such offence.—1 Wyman's Rev., Civ., and Crim. Report, Cir. 3, 16.

To convict a prisoner of being a member of an unlawful assembly, and of culpable offence. homicide not amounting to murder, it must be shown that he had an illegal object in com- According as mon with, and took part in the illegal act done by, the others.—FAIZ ALY alias IMDAD bailable or ALI, I W. R. 20. [Loch and Glover,]]. Nov. 4, 1864.]

»HELD by the majority that where two members of an unlawful assembly use spears, Not comp. and deliberately pierce another man through the chest and abdomen with the knowledge that death is likely to ensue, although without proof of any intention to cause death, all the members of the unlawful assembly are jointly guilty of murder.—Queen v. Nazoo FAKIR, 4 W. R. 26. [Kemp, Seton-Karr, and Campbell, JJ. Nov. 27, 1865.]

WHEN the result of a joint attack by several persons on one party is a fracture of the arm of the party assaulted, the offence committed is grievous hurt, and not assault; and as the attack was made in furtherance of a common object, all are equally guilty of the same offence.—Queen v. Ramtohul Sing, 5 W. R. 12. [Kemp and Glover, J]. Jan. 16, 1866.

IF several persons go out together to apprehend a man, and take him to the thana on a charge of thett, and some of the party, in the presence of the others, assault and ill-treat the man, all present do not necessarily, by their presence, assist every act done, nor are consequently liable as principals. "In the present case," says Sir Barnes Peacock, "the attention of the Sessions Judge should, I think, be called to another error which he committed. He says the taking away of Oomadee, and assisting, by their presence, in the beating of him, abetted the commission of culpable homicide not amounting to murder.

may issue for not.

is the principle in this wor in the tendment of the gen an unlawful assembly I flusticle ye answer & Google

does not follow that, because they were present with the intention of taking him in they assisted, by their presence, in the beating of him to such an extent as to case If the object and design of those who seized Oomades was merely to take him to 1 thana on a charge of theft, and it was not part of the common design to best ! would not all be liable for the consequence of the beating merely because they were sent. It is laid down that when several persons are in company together, engaged in common purpose, lawful or unlawful, and one of them, without the knowledge of co of the others, commits any offence, the others will not be involved in the guilt, unless act done was in some manner in furtherance of the common intention. It is also that, although a man is present when a felony is committed, if he take no part in 🤼 🗸 do not act in concert with those who committed it, he will not be a felon mersily because he did not attempt to prevent it, or to apprehend the felon. But if several persons together for the purpose of apprehending a man and taking him to the thana en and of theft, and some of the party, in the presence of the others, beat and ill-treat the a cruel and wolent manner, and the others stand by and look on without endeaved have to deal with the facts might very properly infer that they were all asserting that the harting was in furtherance of a common design. to dissuade them from their cruel and violent conduct, it appears to me that the and acting in concert, and that the beating was in furtherance of a common des do not know what the evidence was. All I wish to point out is, that all who are present not necessarily assist by their presence every act that is done in their presence, and consequently liable to be punished as principals "—QUEEN V. GORACHAND GOPE, § W. 45. [Peacock, C.J., and Trevor and Norman, JJ. Mar. 3, 1866.]

Where persons join an unlawful assembly for the purpose of committing an assing and instead of preventing those armed from using their weapons encourage them to so, they are in the same position as those members of the unlawful assembly who strated the blows.—Queen v. Dushruth Roy. 7 W. R. 58. [Glover, J. April 18, 1867.]

The offence of rioting armed with deadly weapons, and stabbing a person on the premises the riot takes place, are distinct offences under ss. 148, 149, and 324 of the Particle, s. 149 being read as a proviso to s. 148.—QUEEN v. CALLACHAND, 7 W.R. [Norman and Seton-Karr, J]. April 29, 1867.] See contra, Queen v. Dursoola, 9 R. 33, supra, p. 103.

A LARGE body of men belonging to one faction waylaid another body of make be ing to a second faction, and a fight ensued, in the course of which a member of the mentioned faction was wounded, and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed Held by Norman, J. (whose opinion prevailed), that the wounded man had ceased to a member of the unlawful assembly when he retired wounded, and that he could not, unl s. 149 of the Penal Code, be made liable for the subsequent murder. Held by E. Jacks J., that he remained a member of the unlawful assembly. In delivering judgment, Horn J., made the following important remarks: "The evidence shows that, on the reseat the Kazis, and before the renewal of the combat in which Baber Ali Mira was billed, prisoner Wahid Ali had separated himself from his faction, and sat down apart from the He probably no longer had the same common object as the members of the union assembly from which he had separated himself. It does not appear that he had continu to urge on the others. He was apparently solely occupied by his own suffering. He was not be convicted under s. 149, unless he was a member of the unlawful assembly at the ti of the committing the offence. We think the fair inference from the facts is, that he is ceased to be so when the fatal wound was inflicted on Baber Ali Mira, and, therefore, the he cannot be convicted or punished for an act committed by a member of that assem! under s. 149. It is plain that he was no longer co-operating with the others, and he is not the power to prevent or check the violence of the others, as he might have had if continued with them."—QUEEN v. KABLL CAZEE, 3 B. L. R, A. Cr., I. [Norman and Jack Continued with them."—QUEEN v. KABLL CAZEE, 3 B. L. R, A. Cr., I. [Norman and Jack Continued with them."—QUEEN v. KABLL CAZEE, 3 B. L. R, A. Cr., I. [Norman and Jack Continued with them."—QUEEN v. KABLL CAZEE, 3 B. L. R, A. Cr., I. [Norman and Jack Continued with the c son, JJ. April 8, 1869.]

WHERE there has been no unlawful assembly, but a sudden quarrel, and an affirm which resulted grievous hurt, and consequent death, there can only be a convictifor an affray, and not one for rioting.—Queen v. Phoolice Misser, 12 W. R. 72. In the case the High Court does not seem to have considered the question whether any one the accused was guilty of culpable homicide. []ackson and Markby,]]. Nov. 30, 106

WHERE a number of persons, members of an unlawful assembly, went to abduct if and one of them killed B in the attempt to abduct A, held that all the persons concess

MAP. VIII.] OFFENCES AGAINST PUBLIC TRANQUILLITY. [Sec. 1498

the attempt at abduction were guilty (looking to s. 149 of the Penal Code) of causing beath of B.—Queen v. Golam Arfin, 13 W. R. 33; 4 B. L. R. 47. [Loch and Hobmes, J]. Feb. 19, 1870.]

HELD (Ainslie, J., dissenting) that s. 149 of the Penal Code is not intended to sub-It a member of an unlawful assembly to punishment for every offence which is commit-**B** by one of its members during the time they are engaged in the prosecution of the commobject. In order to bring a case within s. 149, the act must be done with a view to complish the common object of the unlawful assembly, or it must be proved that the nce, though committed in prosecution of the common object of the unlawful assembly, which the accused knew would be likely to be committed in prosecution of the comhobject. Per Jackson, J.—Any offence done by a member of an unlawful assembly in Decution of the particular one or more of the five objects mentioned in s. 141, which is we brought home to the unlawful assembly to which a prisoner belongs, is an offence this the meaning of the first part of s. 149. Where a certain number of persons, mem-se of an unlawful assembly (partyA), attacked another party (B), who were in occupan of land, with the view to drive them off the land by force, and one of the members party A fired a gun at, and killed, one of the persons in party B, in consequence of a den and unexpected resistance which was offered by party B, it was held (Ainslie, J., seating), on a consideration of the evidence, that the persons composing party A other in the person who fired the gun could not be convicted of murder under s. 149, Penal ide. The conviction was altered under the circumstances to one of rioting armed the adeadly weapon under s. 148 of the Penal Code.—QUEEN v. SABID ALI 20 W. R. 5; 18. L. R. 347. [Couch. C.J., and Jackson, Phear, Ainslie, and Pontifex,]]. April 21,

It is necessary, before persons can be convicted of rioting, &c., under s. 147 or s. 149, and Code, to ascertain clearly that they have taken such a share in the transaction as Bring them within the criminal charge; and it must appear on the evidence that they have common object, which common object they were going to carry out by unlawful ans.—QUEEN v. GHOLAM MAHOMED, 22 W. R. 17. [Markby and Mitter, JJ. May 26, 44]

WHERE each of several persons took part in beating a person so as to break eighteen is and cause his death, each of them was held to be guilty, as a principal, of the murder the deseased.—Queen v. Gour Chunder Dass, 24 W. R. 5. [Markby and Morris,]]. by 31, 1875.]

WHERE, after the object of an unlawful assembly had been accomplished, and the posite party driven away, one of the members entered into an altercation with another, it wounded him with a fish-spear, it was held that the act was not one done with a view to monplish the common object of the assembly, or one which the rest knew would be likely be committed in the prosecution of that object.—In the Matter of Binod, 24 W. R. [Kemp and Glover, J]. Nov. 17, 1875.]

If a hody of men armed with lathis, and under the leadership of one who, to the knowies of the rest, is armed with a gun, assemble for the purpose of forcibly carrying off the man's property, and if, in effecting that purpose, any one of the party, taking the mention and kills a person who is making a lawful resistance, the whole party may perly be convicted of murder under s. 140 of the Penal Code.—HARI SINGH v. EMPRESS, L. R. 49. [Jackson, Mitter, and Maclean,]]. June 4, 1878.]

A NUMBER of an unlawful assembly, some members of which have caused grievous un, cannot lawfully be punished f r the offence of rioting as well as for the offence of using grievous hurt.—Empress v. Ram Partab, I. L. R., 6 All. 121. [Straight,]. Dec. 188.]

The offences of rioting armed with a deadly weapon and voluntarily causing hurt with dangerous weapon to two persons are distinct offences, and a person charged with such the scan be convicted and sentenced in respect of the rioting and of the hurt caused to the offences injured. A and B were charged with rioting armed with deadly weaters. 148 of the Penal Code; and they were also charged under s. 324, coupled this. 149, with causing hurt by dangerous weapons to X; and B was further charged thes. 324, with causing a like hurt to Y, A being also charged under s. 324, coupled this. 149, in respect of the hurt caused by B to Y. A and B were convicted on all the state of the sentences, to take effect in succession, were awarded in respect of the offences under s. 324 were committed during the riot. Held

SEC. 149.] OFFENCES AGAINST PUBLIC TRANQUILLITY. [CHAP. VIII.

that the several acts with regard to which the prisoners were charged did not fall within the provisions of s, 71 of the Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that consequently, under s. 235 of the Criminal Procedure Code, the several sentences passed were strictly legal.—Loke Nath Sircar v. Queen-Empress, I. L. R., 11 Cal. 349. [Tottenham and Ghose, J]. Mar. 6, 1885.]

S. 149 of the Penal Code creates no offence, but was intended to make it clear that are accused person whose case falls within its terms cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly, or such as the members of the assembly knew to be likely to b committed in prosecution of that object. In prosecution of the common object of an un lawful assembly, M, with his own hand, caused grievous hurt. M and other members of the assembly, as to whom it did not appear whether or not any of them personally used force or violence, were convicted of rioting under s. 147, and grievous huit under s. 32 of the Penal Code, and were each sentenced to separate terms of imprisonment for each offence. The highest aggregate punishment, which was M's, was six years' rigorous im prisonment, being one year for rioting, and five years for causing grievous hurt. assuming s. 71 of the Penal Code to be applicable, the sentences were not illegal, as the combined periods of imprisonment did not, in the case of any prisoner, exceed the maximum punishment of seven years' rigorous imprisonment which could have been awarded for the offence punishable under s. 325. Held, also, that the riot could not in any of the cases be considered a part of the offence under s. 325, that s. 71 did not apply, and that the sentences were legal, Queen-Empress v. Ram Partab (I. L. R., 6 All. 121) dissented from. Queen-Empress v. Dungar Singh (I. L. R., 7 All. 29), Queen-Empress v. Ram Sarup (I. L. R., 7 All. 767), Queen v. Rubbeecollah (7 W. R. 13), Loke Nath Sarkar v. Queen-Empress (I. L. R., 11 Cal. 349), Queen-Empress v. Pershad (I. L. R., 7 All. 414). Chandra Kant Bhattacharjee v. Queen Empress (I. L. R., 12 Cal. 498), and Reg. v. Tukaya bin Tamana (I. L. R., 1 Bom. 214) referred to.—Queen-Empress v. BISHESHAR I. L. R., 9 All. 645. [Edge, C.J., and Brodhurst, J. May 16, 1887.]

The meaning of s. 149 is clearly explained by Alison in the following remarks:
"It is no less worthy of notice that this holds only with such outrages as are the natural result of the common enterprise, and which all who engaged in it must have made up their minds to be indifferent to when they once concurred in its adoption. It will not hold, therefore, with separate and independent acts of violence as are not so much the object or natural and usual consequence of the undertaking, as the result of an accidental and casual ebullition of wickedness on the part of some of the actors, which went much beyond the common purpose of the assembly. Thus, if a mob repair to a warehouse of grain with the intent to compel the dealer to sell at their own price, certainly all the measures calculated to constrain or intimidate his will are chargeable on all those present, as throwing stones, breaking open his doors, threatening or maltreating his own or his servant's person, or the like; but if, taking advantage of the opportunity thus afforded, some individuals break into the building and commit theft, or set it on fire, or murder the inmates those ulterior and undesigned acts of violence can be stated only against the actual perpetrators."—Principles of the Law of Scotland, p. 524.

THE accused were charged before a Magistrate of the second class with causing grievous hurt, as members of an unlawful assembly, under ss. 149 and 325 of the Penal Code The evidence showed that one of the accused had used an axe in causing the hurt. The Magistrate apparently ignored this fact, and he convicted the accused under s. 325 of the Code. The accused appealed. The District Magistrate who heard one appeal, and the First-class Magistrate who heard the rest of the appeals, were both of opinion that the of fence committed by the accused was one of causing grievous hurt with a dangerous weapon within the meaning of s. 326 of the Penal Code, and as such beyond the jurisdiction of the Second-class Magistrate. But they did not think it proper, under the circumstances of the case, to quash the convictions. The Sessions Judge, on examining the record of the case, was of opinion that as the offence committed by the accused was not cognizable by the trying Magistrate, his proceedings were void ab initio under s. 530 of the Criminal Procedure Code. He, therefore, referred the case to the High Court, and recommended that the convictions under s. 325 should be set aside. Held that the proceedings before the Second-class Magistrate were not void ab initio, as he had jurisdiction to try the accused for offences punishable under ss. 149 and 325 of the Penal Code with which they were originally charged. Held, also, that though it was the duty of the trying Magistrate, when

tap. VIII.] OFFENCES AGAINST PUBLIC TRANQUILLITY, [Secs. 150, 151,

bidesce disclosed a circumstance of aggravation, such as the use of a dangerous wea-, which made the offence cognizable by a higher Court, to adopt the proper procedure nd the case to the higher Court, still it was not necessary to quash the proceedings, e accused were not in any way prejudiced, and the sentences were not inadequate.

In a case in which it was found that all the accused were guilty of rioting armed **Ir deadly wea**pons, that the fight was premeditated and pre-arranged, a regular pitched ser trial of strength between the two parties concerned in the riot, and that one excused, in the course of the riot and in prosecution of the common object of the ably, killed, or attempted to kill, a man under such circumstances that his act ted to an attempt to murder, the question arose whether that act could be said sea less grave character by reason of excep. 5 to s. 300 of the Penal Code. Per ...Held that upon such finding the case did not fall within the exception. Per J. (Petheram, C J., and Macpherson, J., concurring).—The 5th exception to po should receive a strict and not a liberal construction; and in applying the excephit mould be considered with reference to the act consented to or authorized, and **It with reference** to the person or persons authorized, and as to each of those some tee of particularity at least should appear upon the facts proved before the excepnembe said to apply. Shamshere Khan v. Empress (I. L. R., 6 Cal. 154) and Queen Kakier Mather (unreported) dissented from so far as they decide that from such a as the above consent to take the risk of death is inferred. Per O'Kinealy. Before excep. 5 can be applied, it must be found that the person killed, with a full perledge of the facts, determined to suffer death, or take the risk of death; and that le determination continue 1 up to, and existed at, the moment of his death. Queen v. lier Mather (unreported) observed on. Per Ghose, J.-No general rule of law can be Il down in determining in cases of this description whether the person killed or woundsuffered death, or took the risk of death, with his own consent, it being a question fact, and not of law, to be decided upon the circumstances of each case as it arises. samskere Khan v. Empress (I. L. R., 6 Cal. 154) and Queen v. Kukier Mather (unreportposserved on, and the propositions of law laid down therein concurred with. QUEEN-PRESS . NAYAMUDDIN, I. L. R., 18 Cal. 484. [Petheram, C.], and Pigot, O'Kinealy, acpherson, and Ghose, JJ. 19th May 1891.]

WHEN a prisoner is convicted of rioting and of hurt, and the conviction for hurt pends upon the application of s. 149 of the Penal Code, it is illegal to pass two sentences refor riot and one for hurt. But in such a case the two sentences would be legal, proited the total punishment does not exceed the maximum which the Court might pass wasy one of the offences. When, however, the accused is guilty of rioting, and is also med to have himself caused the hurt, he may be punished both for rioting and for hurt. such a case the total punishment can legally exceed the maximum which the Court ight pass for any one of the offences. Queen Empress v. Rum Sarup (I. L. R., 7 All. Court by 37) approved.—Queen-Empress v. Bana Punja, I. L. R., 17 Bom. 260. [Sargent, C.]., which offence is triable. arsons and Telang, JJ. Dec. 19, 1892.]

160. Whoever hires, or engages, or employs, or promotes or connives at summons, the hiring, engagement, or employment of any per- according to son to join or become a member of any unlawful offence committed by Hiring, or consisting at hirg, a persons to join an unassembly, shall be punishable as a member of such person hired,

plawful assembly, and for any offence which may be committed by any such &c. erson, as a member of such unlawful assembly, in pursuance of such hiring, offence is magagement, or employment, in the same manner as if he had been a member bailable or i men unlawful assembly, or himself had committed such offence.

151. Whoever knowingly joins or continues in any assembly of five or Any Mag more persons likely to cause a disturbance of the Cognizable, Knowingly joining or conpublic peace, after such assembly has been lawfully Summons, og in assembly of five or commanded to disperse, shall be punished with im- Bailable. are purpose after command prisonment of either description for a term which

may extend to six months, or with fine, or with both.

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not. Not comp.

lognizable.

SEC. 152.] OFFENCES AGAINST PUBLIC TRANQUILLITY. [CHAP, VIII

Explanation.—If the assembly is an unlawful assembly within the inf of section 141, the offender will be punishable under section 145.

An order given by an officer superior in rank to an officer in charge of police stilled commanding an assembly of five or more persons likely to cause a disturbance of the lic peace to disperse, is a lawful order within the meaning of s. 480 of the Code of minal Procedure (Act X. of 1872).—EMPRESS v. Tucker, l. L. R., 7 Bom. 42. [Kanda Pinhey, J]. Sep. 28, 1882.]

Where the object of only three persons was to draw a crowd, and their action as such as was calculated to, and did, draw a crowd of fifty or sixty persons likely to condition to the public peace, held that the gathering constituted an assembly of the more persons within the meaning of s. 151 of the Penal Code, and that a secural to perse after being lawfully commanded to disperse rendered every member of the companies of the penal Code, and that a secural to the penal Code, and the penal

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable, Warrant. Bailable. Not comp.

Assaulting or obstructing public servant when suppressing riot, &c.

Assault, or obstructs or attempts obstruct, any public servant in the discharge of a duty as such public servant in endeavouring to duty as such public servant in the discharge of a duty as such public servant in the discharge of a duty as such public servant in the discharge of a duty as such public servant in the discharge of a duty as such public servant in the discharge of a duty as such public servant in the discharge of a duty as such public servant in the discharge of a duty as such public servant in the discharge of a duty as such public servant in the discharge of a duty as such public servant in the discharge of a duty as such public servant in endeavouring to duty as such public servant i

affray, or uses, or threatens or attempts to use, criminal force to such published with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

A, WITH six others, commits the offences of rioting, grievous hurt, and assauking public servant endeavouring in the discharge of his duty as such to suppress the riot. — may be separately charged with, and convicted of, offences under ss. 147, 325, and ss2 the Indian Penal Code.—Crim. Pro. Code (Act X. of 1882), s. 235, illus. g.

• ILLUS. g of s. 325 of the Criminal Procedure Code does not apply merely to the canad persons who, in addition to the offence of rioting, have, with their own hands, committee the further offences of voluntarily causing grievous hurt, and of assaulting a public set vant when engaged in suppressing a riot; and the convictions referred to in the litustation relate specially to convictions obtained under the provisions of s. 149 of the Pett Code.—Queen-Empress v. Ram Sarup, I. L. R., 7 All. 757. [Petheram, C.J., and Straight Brodhurst, and Tyrrell, JJ. May 12, 1885.]

EIGHT persons, who were charged with a number of others, were tried on wash charges, consisting of rioting armed with deadly weapons (s. 148, Penal Code), assaulting or obstructing a public servant when suppressing a riot (s. 152), and voluntarily cause hurt and grievous hurt to deter a public servant from his duty (ss. 332 and 333). common object set out in the charge was "to resist the execution of a decree obtained be Suresh Chunder Deb against Shaik Ali Yar in the Court of the Second Subordinate Judge of Alipore, dated 30th April 1891, and also by means of criminal force, or show of crimi nal force, to overawe the members of the police-force in the execution of their lawfu powers as police-officers," and it was held that resistance to the police was one of the com ponent parts of the offence of rioting charged. At the trial in the Court of Session al eight accused were convicted of the offence charged under s. 148, and each was sentenced to the maximum punishment allowed under that section, vis., three years' rigorous impel sonment. Seven out of the eight were convicted of offences under s. 152, and sentenced end to an additional term of two years' rigorous imprisonment for those offences. to an additional term of two years' rigorous imprisonment for those offences. Two or of the seven accused were further convicted of offences under s. 332 of the Penal Code the hurt therein charged being caused to police-officers engaged in suppressing the riot, and each sentenced to a further additional term of two years' rigorous imprisonment for the offence. The eighth accused, who was not convicted of an offence under s. 152, was con victed of an offence under s. 333, the grievous hurt being similarly caused to a police officer, and for that offence was sentenced to five years' rigorous imprisonment in addition to the sentence of three years passed on him under s. 148. It was contended on appea (1) that the sentences passed under s. 152 in addition to those under s. 148 were illegal (2) that separate sentences under s. 152 and ss. 332 and 333 were illegal; (2) that the cumulative sentences under s. 148 and ss. 332 and 333 were illegal in so far as they exceeded the maximum sentence provided for either of the offences. Held, as regards (1)

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MP. VIII.] OFFENCES AGAINST PUBLIC TRANQUILLITY. [SRCS. 153, 1540

tal resistance to the police was one of the component parts of the offence of rioting thich the accused were convicted and sentenced to the maximum punishment providby s. 148, and having regard to the provisions of s. 71, the additional sentences under 2 were illegal. Held, further, that s. 152 contemplates an assault or obstruction to particular public servant, and that as the charge against the accused as framed was been the effect that they as sulted and obstructed members of the police force in the urge of their duties, &c., the conviction under that section could not be upheld. k, as regards (2), that separate sentences under s. 152 and ss. 332 and 333 were illegal, he hart inflicted on the police-officers was the violence used towards them which consted the essence of the offence under s. 152. Held, as regards (3), that the separate ences passed under s. 148 and ss. 332 and 333 were not illegal, there being nothing in of the Penal Code which limits the amount of punishment that may be imposed for ruffences.—Ferasat v. Queen-Empress, I. L. R., 19 Cal. 105. [Beverley and Ameer []]. Nov. 9, 1891.]

153. Whoever malignantly or wantonly, by doing anything which is ille- Any Mag. gal, gives provocation to any person, intending or Cognizable. untualy giving , provo-n, with intent to cause knowing it to be likely that such provocation will Bailable. cause the offence of rioting to be committed, shall, Not comp. the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description Any Mag. punished with imprisonment of educi description and for a term which may extend to one year, or with Cognizable. Summons. Riciting be committed;

e, or with both; and if the offence of rioting be not committed, with impri- Bailable. sonment of either description for a term which may Not comp. I not committed. extend to six months, or with fine, or with both.

154. Whenever any unlawful assembly or riot takes place, the owner or Presy. Mag: occupier of the land upon which such unlawful as- or Mag. of 1st Dener or occupier of land sembly is held, or such riot is committed, and any Uncog. hich as unlawful assembliched. person having or claiming an interest in such land, Summons. all be punishable with fine not exceeding one thousand rupees, if he or his Bailable. test or manager, knowing that such offence is being or has been committed, baving reason to believe it is likely to be committed, do not give the earliest tice thereof in his or their power to the principal officer at the nearest policetion, and do not in the case of his or their having reason to believe that it s about to be committed, use all lawful means in his or their power to preat it, and, in the event of its taking place, do not use all lawful means in his their power to disperse or suppress the riot or unlawful assembly.

The owner or occupier of land on which an unlawful assembly is held cannot be conted under s. 154 of the Penal Code, unless there is a finding that the riot was preme-Alad QUEEN v. SURROOP CHUNDER PAUL, 12 W. R. 75. [Norman and Kemp,]]. ±. 10, 186g.]

THE following procedure should be observed in the case of a charge under s. 154 anseths owner of land on which an unlawful assembly is held: The charge ought to be clear and distinct charge of the offence specified in s. 154. After such charge, the isoner should be called on to plead, and if his plea is 'not guilty,' then legal evidence the prosecution should be gone into. The records of another case would not, of themlves, be legal evidence itself for the conviction. This separate evidence in support of e charge under s. 15 being given, and a prima-facie case being made out for the prosetion, the prisoner must then be allowed opportunity to rebut that evidence, after which dement should be passed.—In the Matter of C. G. D. Betts and Mahomed Ismail MOWDHRY, 15 W. R. 6; 6 B. L. R., Ap., 83. [Bayley and Mitter, JJ. Jan. 21, 1871.]

It is not necessary, in order to render the owner of land on which a riot takes place iminally liable, that he should be aware of the likelihood of such an occurrence.

r karindashould have taken an active part in the riot is sufficient to warrant the con-ction of the owner under s. 154 of the Penal Code.—Queen-Empress v. Pavag Singh, l. R., 12 All. 550. [Edge, C.J., and Brodhurst, J. June 20, 1890.]

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«Secs. 155-157.] OFFENCES AGAINST PUBLIC TRANQUILLITY. [CHAP. VIII

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

Liability of person for person who is the owner or occupier of any lease benefit a riot is committed.

Liability of person for person who is the owner or occupier of any lease respecting which such riot takes place, or who claim any interest in such land, or in the subject of any interest of such land, or in the subject of any interest of such land, or in the subject of any interest of such land, or in the subject of any interest in such land, or in the subj

A ZEMINDAR ought not to be made liable under s. 155, Penal Code, for a sudder unpremeditated riot which there was no reason to infer he could have anticipated thought likely to happen.—QUBEN v. HURNATH ROY, 3 W. R. 54. [Kemp and Seton a

The mere fact that a person is the owner or occupier of land, in respect of which, a upon which, a riot takes place, is not sufficient to raise a presumption against him must be positively proved that he or his agent or manager knew or had reason to belief that the riot would be committed, and, having that knowledge or belief, did not used lawful means in his power to prevent, disperse, or suppress it —QUEEN v. Surroop Chu DER PAUL, 12 W. R. 75. [Norman and Kemp, JJ. Dec. 10, 1869]

To constitute an offence under s. 157 of the Penal Code, it must be proved that the accused has hired, or engaged, or employed other persons for the purpose of an analysis assembly, and it is not sufficient to show that some of the accused's servants have be taken from a district where men have a well-known character as lathials, and had been this service some time before the riot was perpetrated. A non-resident partner or shall who has taken no active part in the management of the estate, cannot, like a resident sharer, be convicted under ss. 154 and 155 of the Penal Code.—In the Matter of Radhi Math Chowdhry, 7 C. L. R. 289. [Mitter and Maclean, J]. Sep 9, 1880.]

In order to convict the manager of an indigo-factory under s. 156 of the Penal Colit must be shown by legal evidence (1) that a riot was committed; (2) that the riot, committed, was committed for the benefit of the accused; and (3) that the accused is reason to believe that a riot was likely to be committed.—BRAE v. EMPRESS, I. L. R, 1 Cal. 338. [Mitter and Pigot, J]. Sep. 22, 1883.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

Liability of agent of owner person who is the owner or occupier of any last or occupier for whose benefit a riot is committed. from wany interest in such land, or in the subject of and dispute which gave rise to riot, or who has accepted or derived any benefits such agent or manager of such person shall be punjshable with find if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed will likely to be held, shall not use all lawful means in his power to prevent such rior assembly from taking place, and for suppressing and dispersing the same.

In order to convict the manager of an indigo-factory under s. 156 of the Penal Codit must be shown by legal evidence (1) that a riot was committed; (2) that the riot, committed, was committed for the benefit of the accused; and (3) that the accused reason to believe that a riot was likely to be committed.—BRAE v. EMPRESS, L. L. R. Cal. 338. [Mitter and Pigot, J]. Sep. 22, 1883.]

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

157. Whoever harbours, receives, or assembles in any house or premise Harbouring persons hired in his occupation or charge, or under his control for an unlawful assembly. any persons, knowing that such persons have bee hired, engaged, or employed, or are about to be hired, engaged, or employed, i join or become members of an unlawful assembly, shall be punjshed wis imprisonment of either description for a term which may extend to six months or with fine, or with both.

have affring - rest, affring faces S: orger unlawful around, viol + abbray ? IAP. VIII. OFFENCES AGAINST PUBLIC TRANQUILLITY. [Secs. 158-160. 15 constitute an offence under s. 157 of the Penal Code, it must be proved that the msed has hired, or engaged, or employed other persons for the purpose of an unlawful embly, and it is not sufficient to show that some of the accused's servants have been m from a district where men have a well-known character as lathials, and had been in service some time before the riot was perpetrated. A non-resident partner or sharer, has taken no active part in the management of the estate, cannot, like a resident ger, be convicted under ss. 154 and 155 of the Penal Code.—In the Matter of Radha-EM CHOWDHRY, 7 C. L. R. 289. [Mitter and Maclean, JJ. Sep. 9, 1880.] 158. Whoever is engaged or hired, or offers or attempts to be hired or en- * Presy. Mag. being hired to take part gaged, to do or assist in doing any of the acts specified or Mag. of ist or and class. make ful assembly or riot. in section 141, shall be punished with imprisonment Cognizable. either description for a term which may extend to six months, or with fine, or Summons. th both; and whoever, being so engaged or hired as aforesaid, goes armed, or Not comp. engages or offers to go armed, with any deadly weapon, Ir to go armed... or with anything which, used as a weapon of offence, † Presy. Mag. ikely to cause death, shall be punished with imprisonment of either description or Mag. of 1st or 2nd class. term which may extend to two years, or with fine, or with both. 159. When two or more persons, by fighting in a public place, disturb Bailable. the public peace, they are said to "commit an af- Not commit fray." I will be committed in a Brissle place 160. Whoever commits an affray shall be punished with imprisonment Any Mag. of either description for a term which may extend Uncog. unishment for committing to one month, or with fine which may extend to one Bailable. indred rupees, or with 460th. In an affray respecting land, one party were the aggressors, and the other side (had passair not ended fatally) would have been in the legal exercise of the right of defence property, and would have been entitled to the benefit of s. 104 of the Penal Code. Held year's imprisonment was sufficient punishment for the latter.—QUEEN v. SHUNKER IGH, I W. R. 34. [Kemp and Glover,]]. Dec. 5, 1864.] I SENTENCE of rigorous imprisonment passed in a case of affray with homicide under g. VI. of 1828 quashed as illegal, and altered to one of imprisonment with labour. BEN v. KOMARUDDY BHOOYA, I W. R. 47. [Kemp and Glover,]]. Dec. 21, 1864.] In a trial arising out of an affray or faction fight, the members of each faction should liked separately. The statements of the members of each faction can then, if desired, taken on solemn affirmation, and be made evidence against their opponents; but if they time to give evidence on the ground of implicating themselves, they cannot be compeled to do so.—QUEEN v. MAHOMED HOSSEIN, I N.-W. P. 293. [Pearson and Turner, J]. iil 2, 1869.] WHERE certain parties, in the course of a sudden quarrel, committed an affray, resultin grievous hurt and consequent death, it was held that, as there was no unlawful asably, there could not be a conviction for rioting, but for affray only. The question wher any of the prisoners were guilty of culpable homicide was not considered by the Court. Дивей Ф. Рнооцев Misser, 12 W. R. 27. [Jackson and Markby, JJ. Nov. 30, 1869.] PRISONERS were convicted of having committed an offence punishable under s. 160 of Penal-Code, and were sentenced to pay a fine of Rs. 25 each, or in default to be rigorly imprisoned for 30 days, the full term of imprisonment under the section. Held by a jority of the High Court (Kindersley, J., dissenting) that, having regard to the provins of s. 309 of the Criminal Procedure Code (Act X. of 1872), the sentence was legal. Reg. & Muhammad Saib, I. L. R., I Mad. 277. [Innes, Offg. C.J., and Kindersley, Busd, and Tarrant, JJ. Sep. 4, 1877.] But see the following ruling:— S. 33 of the Criminal Procedure Code, 1882, does not authorize a Magistrate to pass entence, in default of payment, in excess of the term prescribed by s. 65 of the Penal De. Reg. v. Muhammad Saib (I. L. R., 1 Mad. 277) was overruled in 1881.—QUEENPPESS v. Venkate Sagadu, I. L. R., 10 Mad. 165. [Collins, C.]., and Kernan, Mutsami Ayyar, Brandt, and Parker, JJ. Jan. 1887.] Prior regimes of last 5 persons & Combe Committee in a Private place of the in a Private place of the in a Private place of the stand of the committee of the committee of the committee of the place of the committee of the committee of the place of the

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Summons.

Bailable. Not comp.

Public servant taking gratification other than legal remuneration in respect of an official act.

Sec. 161.7

161. Whoever, being or expecting to be a public servant, acceptatains, or agrees to accept or attempts to obtain, any person, for himself or for any other person gratification whatever, other than legal resi tion, as a motive or reward for doing, or in

to do, any official act, or for showing, or forbearing to show, in the his official functions, favour or disfavour to any person, or for renderi attempting to render, any service or disservice to any person, with the Le tive or Executive Government of India, or with the Government of any sidency, or with any Lieutenant-Governor, or with any public servant, as shall be punished with imprisonment of either description for a terms may extend to three years, or with fine, or with both.

Explanations.—" Expecting to be a public servant."—If a person with pecting to be in office obtains a gratification by deceiving others into a that he is about to be in office, and that he will then serve them, he may guilty of cheating, but he is not guilty of the offence defined in this section "Gratification."—The word "gratification" is not restricted to pecual gratifications, or to gratifications estimable in money.

"Legal remuneration."—The words "legal remuneration" are not stricted to remuneration which a public servant can lawfully demand. include all remuneration which he is permitted by the Government which serves to accept.

"A motive or reward for doing."—A person who receives a gratifical as a motive for doing what he does not intend to do, or as a reward for de what he has not done, comes within these words.

Illustrations.

- (a.) A, a moonsiff, obtains from Z, a banker, a situation in Z's bank for A's brothe a reward to A for deciding a cause in favour of Z. A has committed the offence define this section.
- (b.) A, holding the office of Resident at the Court of a subsidiary Power, accepts a of rupees from the Minister of that Power. It does not appear that A accepted this as a motive or a reward for doing or forbearing to do any particular official act, or for dering or attempting to render any particular service to that Power with the British vernment. But it does appear that A accepted the sum as a motive or reward for get ally showing favour in the exercise of his official functions to that Power. A has come ted the offence defined in this section.
- (c.) A, a public servant, induces Z erroneously to believe that A's influence with Government has obtained a title for Z, and thus induces Z to give A money as a rew for this service. A has committed the offence defined in this section.

Rulings.

THE Law Commissioners remark: " The punishment of fine will, we think, be for very efficacious in cases of this description, if the Judges exercise the power given th as they ought to do, and compel the delinquent to deliver up the whole of his ill-got gain.'

A OFFERS a bribe to B, a public servant, as a reward for showing A some favour the exercise of B's official functions. B accepts the bribe. A has abetted the offence fined in s. 161.—Penal Code, s. 100. illus. a

Act IV. of 1879 declares railway-servants to be public servants

IP. IX.] OFFENCES RELATING TO PUBLIC SERVANTS. [Sec. 161,

CHARGE.—That you, being a public servant in the Department, directly pted from [state the name], for another party [state the name], a gratification, other legal remuneration, as a motive for forbearing to do an official act, and thereby commod an offence punishable under s. 161 of the Indian Penal Code, and within the cognets of the Court of Session [or High Court].—Crim Pro. Code (Act X. of 1882), v., form xxviii. (i.).

UNDER the above section a charge should be so framed as to deal with separate moin separate heads.—5 Rev., Jud., and Pol. Jour. 138.

THE prisoner was convicted by the Sessions Judge of the offence of accepting a gration as police-patel under s 161 of the Penal Code. The examination of the prison-tore the Magistrate was not taken down in the form of question and answer, as red by s. 205 of the Criminal Procedure Code. Per Curiam.— "The examination s. 205 to be admissible as evidence under s. 366 must be taken in the form of tion and answer, and certified as required in s. 205. But if it be not taken, as in the ent case, the Court can order the confession to be proved by the evidence of the writer be examination or other person who was present. In this case, however, the evidence difficient without the inadmissible examination, and, under ss. 426 and 439, the admissiof the examination as evidence does not invalidate the trial and conviction."—Reg. ITHOJI VALAD ABBA, 2 Bom. H. C. R. 398. [Couch and Newton, JJ. Mar. 16, 1864.]

Case of offering a bribe to a juryman.—Although what passed between the prisoner the juryman might not have amounted to an offer of a bribe to the latter, yet it was to be so when taken in connection with what passed between the prisoner and the man's brother —Queen v. Bawool Chunder Biswas, 1 W. R. 36. [Kemp and sver,]]. Dec. 7, 1864.]

THE motives under which an accused person is charged with having taken a sum of sey other than a legal remuneration should not have been gathered together as one of the charge. If it was necessary that they should be all charged owing to a doubt the mind of the committing officer as to which would be proved or presumed, they had be formed into separate heads; but it would have been preferable had only one or set these motives been selected.—4 W. R., Cr. L., 3, No. 904 of 1865.

THE taking of a gratification by a sarishtadar to influence the Principal Sadr Amin is decisions is sufficient to a legal conviction, whether the sarishtadar did, or did not, bence, or try to influence, the Principal Sadr Amin.—QUEEN v. KALLEE CHURN SARISHBAR, 3 W. R. 10. [Glover, J. May 11, 1865.]

THE evidence of the person who bribes is admissible against the person bribed. A son who accepts for himself, or for some other person, a gratification for inducing, by supt or illegal means, a public servant to forbear to do a certain official act, is punish, not under s. 161, but under s. 162 of the Penal Code.—QUBEN v. OBHOY CHURN ECKERBUTTY, 3 W. R. 19. [Glover, J. May 30, 1865.]

An indictment will not be invalidated in consequence of the charge not notifying the Eific section under which it has to be prosecuted. Under s. 16t, it is necessary to show the offence, the instigation of which is the subject of the charge, has been commit—QUREN v. NATABAR NUNDY, I Ind. Jur., N. S., 43. [Peacock, C.J., and Morgan and cpherson, J]. Jan. 22, 1866.]

WHERE a constable and others enter a house and apprehend certain persons as gam, and afterwards release them on payment of a sum of money by the latter, the offence
mitted is not house-trespass and extortion, but taking a bribe as regards the constable,
abetment of that offence as regards the others.—Govt. v. Mahomed Hossein, 5 W.

[Norman and Campbell,]]. Mar. 5, 1866.]

HELD that bribery and other offences punishable under the Penal Code with imprient exceeding six nonths are not triable under ch. 15 of the Code of Criminal Prote, and cannot, therefore, be compromised under s. 271 of the latter Code.—On a No. 100, dated 29th May 1869, from the Officiating Sessions Judge of Jessere, to the strar of the High Court.—12 W. R. 59. [Peacock, C.J., and Bayley, Kemp, Macpherand Glover, J]. Sep. 6, 1869.]

A PATWARI taking grain as a consideration for showing favour to the giver in the harge of his functions as patwari should be convicted under s. 161 (and not s. 165) of Penal Code. Under s. 253 of the Criminal Procedure Code, it is imperative upon the istrate to summon the witnesses named by the prisoner.—QUEEN v. MUDSOODDEEN, 2 W. P. 148. [Spankie, J. April 29, 1870.]

SEC. 161.] OFFENCES RELATING TO PUBLIC SERVANTS. [CHAP. II

The Local Government, in sanctioning or directing (under s. 167 of the Crimi Procedure Code, 1861) a charge against a public servant of an offence as such public servant, has power to limit its sanction by giving directions as to the person by who and the manner in which, the prosecution is to be preferred and conducted; and a Co has no jurisdiction to entertain a charge against such public servant if preferred others than in accordance with such directions. Semble.—The Local Government has power the like case to direct that the accused servant shall be tried before a specified tribut being one having jurisdiction in that behalf. Therefore, where the sanction directed the accused public servant should be prosecuted upon such charges as Mr. C might prepared to prefer against him, and there was nothing on the record to show, nor disorderwise appear, that Mr. C had preferred any charge against, or taken any part in prosecution of, the accused public servant, the High Court quashed the conviction of accused as having been without jurisdiction.—Reg. v. Vinayak Divakar, 8 Bom. C. R. 32. [Westropp, C.J., and Gibbs and West, JJ. June 14, 1871.]

A PEON of a Collector's Court, who received no fixed pay from the Government, was remunerated by fees whenever employed to serve any process, and was placed on register of supernumerary peons, had been ordered by the Magistrate to do duty on a ticular day at the office of the special sub-registrar, where he was detected receiving eight-anna piece from a person, and was prosecuted for receiving an illegal gratificat as a public servant. Held that the peon was a public servant under the definition of cs. 21. A person who in fact (though wrongly) discharges the duties of an office who has to all appearance, a public servant, may, as such, be tried for receiving an illegratification under s. 161.—Queen v. Ramkristo Doss, 16 W. R. 27; 7 B. L. R. 4 [Ainslie and Paul, J]. July 24, 1871.]

On a conviction of taking illegal gratification, a simple order to refund the motaken is quite inadequate to the gravity of the offence. Although no appeal lay in a case, yet the High Court, upon a reference, having power to interfere, quashed the criction.—In the Matter of Mutty Lall Chuttopadhya, 16 W. R. 64. [Bayley : Kemp, JJ. Dec. 8, 1871.]

Where the accused was charged under s. 116, Penal Code, with having abetted commission of an offence punishable under s. 161 of that Code, the person abetted have been a Civil Surgeon of a sadr station, it was held that the enhanced imprisonment pscribed by the latter part of s. 161 could not be awarded, as the Civil Surgeon was me public servant within the words of the section, "whose duty it is to prevent the compaision of such offence"—Queen v. Ramnath Surma Biswas, 21 W. R. 9. [Phear Morris, J]. Nov. 18, 1873.]

Where a police-officer, who had been called on to answer to a charge of bribery, who was not sustained by the evidence, was found guilty of violation of duty under s. 29. V. of 1861, of which offence the trying officer found sufficient evidence in the cours the trial, held that an accused person called on to answer to a specific charge cannot convicted on an entirely different charge, without previous notice of the offence impute him, and opportunity being afforded him of meeting the accusation under s. 23, Act of 1861. A police-officer is not bound to arrest a person against whom no proceed have been directed, it he believes that he has not sufficient grounds for apprehending h—In The Matter of Grish Chunder Nundee, 26 W. R. 8. [Morris and McDonell, Sep. 7, 1876.]

K, a police-officer, employed in a Criminal Court to read the diaries of cases in tigated by the police, and to bring up in order each case for trial with the accused witnesses, after a case of theft had been decided by the Court in which the persons cused were convicted, and a sum of money, the proceeds of the theft, had been made oby the order of the Court to the prosecutor in the case, asked for, and received from prosecutor, a portion of such money, not as a motive or reward for any of the objects scribed in s. 161 of the Penal Code, but as "dasturi." Held that K was not, under the circumstances, punishable under s. 161 of the Penal Code, but under s. 165 of that Code Empress v. Kampta Prasad, I. L. R., I All. 530. [Stuart, C.J., and Spankie, J. D. 15, 1877.]

The manager of a Court of Wards' estate paid into a Bank, carrying on the treasulusiness of the Government, a sum of money on behalf of Government. B, a poddar

HAP. IX.] OFFENCES RELATING TO PUBLIC SERVANTS. [Sec. 161,

E Bank demanded and took a reward for his trouble in receiving the money. On Bing prosecuted and charged under s. 161 of the Penal Code, held that, although the oney might have been paid on account of Government, it was on behalf of the Bank, and on behalf of the Government, that the money was received by the accused, and that e poddar was a servant of the Bank only, and not a public servant within the meaning cl. 9, s. 21, of the Penal Code.—IN THE MATTER OF THE PETITION OF MODUN MOHUN, L. R., 4 Cal. 376. [Ainslie and Broughton, JJ. Dec. 10, 1878.]

L. R., 4 Cal. 376. [Ainstie and Broughton, J]. Dec. 10, 1878.]

To ask for a bribe is an attempt to obtain one and a bribe may be asked for as effecally in implicit as in explicit terms. Where, therefore, B, who was employed as a clerk the Pension Department, in an interview with A, who was an applicant for a pension, ter referring to his own influence in that department, and instancing two cases in which, that influence, increased pensions had been obtained, proceeded to intimate that anywing might be effected by "kar-rawai," and, on the overture being rejected, concluded by classing that A would rue and repent the rejection of it, held that the offence of attempted to obtain a bribe was consummated.—Empress v. Baldeo Shai, I. L. R., 2 All. 253. Pearson and Spankie, JJ. April 7, 1879]

THE accused was charged with having received illegal gratifications from C and Co. three specific occasions in 1876. In 1876, 1877, and 1878, C and Co. were doing business as Commissariat contractors, and the accused was the manager of the Commissariat office. Held that evidence of similar but unconnected instances of receiving illegal gratications from C and Co. in 1877 and 1878 was not admissible against him under ss. 5 to 3 of the Evidence Act. Held per Garth. C.J. (Maclean, J., concurring).—The evidence as not admissible under s. 14. Per Garth C.J.—S. 14 applies to cases where a particuract is more or less criminal or culpable according to the state of mind or feeling of the erson who does it; not to cases where the question of guilt or innocence depends upon that facts, and not upon the state of a man's mind or feeling. Per Mitter J.—If the recipt of the illegal gratifications mentioned in the charge be considered proved by other ridence, and if it were necessary to ascertain whether the accused received them as a potive for showing favour in the exercise of his official functions, the alleged transactions is 1877 and 1878 would be relevant under s. 14, but they would not be relevant to estable the factor payments in 1876.—Empress v. M. J. Vayapoory Moodeliar, I. L. R., Cal. 655; 8 C. L. R. 197. [Garth, C.J., and Mitter and Maclean, J]. Jan. 22 and Feb. 9, 881

When any Judge, or any public servant not removeable from his office without the metion of the Government of India or the Local Government, is accused as such Judge or ublic servant of any offence, no Court shall take cognizance of such offence, except with he previous sanction of the Government having power to order his removal, or of some ficer empowered in this behalf by such Government, or of some Court or other authority which such Judge or public servant is subordinate, and whose power to give such sancon has not been limited by such Government. Such Government may determine the erson by whom, and the manner in which, the prosecution of such Judge or public serant is to be conducted, and may specify the Court before which the trial is to be held.—rim. Pro. Code (Act X. of 1882), s. 197.

A COMPLAINT was filed by Ganesh Náráyan Sáthe in the Court of the District Maistrate of Poona against Bálkrishna Govind Sindekar and five other mámlatdárs chargig them with purchasing judicial offices through the instrumentality of one Hanmantrao ghirdar, who was alleged to have had influence with Mr. A. T. Crawford, Revenue Comsissioner, C. D. It was held that, as a general rule, any person having knowledge of the ommission of an offence may set the law in motion by a complaint, even though he is not essonally interested or affected by the offence. The exceptions to this rule, of which s. 195 and 198 of the Criminal Procedure Code are examples, are exceptions created by sta-There is nothing in the Code showing an intention to confine prosecutions to the ersons directly injured. Where the offence charged is a "warrant" and not a "summons" ase, a Magistrate ought to proceed with the inquiry or trial in spite of the withdrawal of he complainant, if he finds the elements of an offence on the facts set forth in the com-Haint. S. 248 of the Code of Criminal Procedure applies only to a "summons" case. imble.—A complainant is not a witness punishable for refusal to answer under s. 485 of he Code of Criminal Procedure or under s. 179 of the Penal Code.—In re GANESH NA. MYAN SATHE, I. L. R., 13 Bom. 600. [Scott and Jardine,]]. [une 19, 1889.]

An order by the Board of Revenue, sanctioning the prosecution of a Deputy Tahsillar by the Collector of the District for "bribery or such of the charges set forth in the

OFFENCES RELATING TO PUBLIC SERVANTS: SEC. 162.]

Deputy Collector's report as he thinks likely to stand investigation by a Crimin Court," is not a legal sanction within the meaning of the Criminal Procedure Cod s. 197, and a commitment on any of such charges should be quashed. QUEEN-EMPRE v. SAMAVIER, I. L. R., 16 Mad. 468. [Collins, C.J., and Parker, J. Mar. 8, 14, 1893.]

It is not generally known that, where a person gives a bribe to a public servant the latter's request, the giver commits no offence. The authors of the Code make to following important remarks on the subject: "One important question still remains be considered. We are of opinion that we have provided sufficient punishment for a public servant who receives a bribe. But it may be doubted whether we have provide sufficient punishment for the person who offers it. The person who, without any deman express or implied, on the part of a public servant, volunteers an offer of a bribe, and duces that public servant to accept it, will be punishable under the general rule contain in cl. 88 as an instigator. But the person who complies with a demand, however significant on the part of a public servant, cannot be considered as guilty of instigating that public servant to receive a bribe. We do not consider such a person to be liable to any punis ment, and, as this omission may possibly appear censurable to many persons, we are d sirous to explain our reasons. In all states of society the receiving of a bribe is a bad action and may properly be made punishable. But whether the giving of a bribe ought or oug not to be punished is a question which does not admit of a short and general answer. The are countries in which the giver of a bribe ought to be more severely punished than t receiver. There are countries, on the other hand, in which the giving of a bribe may what it is not desirable to visit with any punishment. In a country situated like Englan the giver of a bribe is generally far more deserving of punishment than the receive The giver is generally the tempter; the receiver is the tempted. The giver is general rich, powerful, well educated; the receiver, needy and ignorant. The giver is under apprehension of suffering any injury if he refuses to give. It is not by fear, but by amtion, that he is generally induced to part with his money. Such a person is a proper su ject of punishment. But there are countries where the case is widely different - where me give bribes to Magistrates from exactly the same feeling which leads them to give the purses to robbers or to pay ransom to pirates—where men give bribes because no man ca without a bribe, obtain common justice. In such countries we think that the giving bribes is not a proper subject of punishment. It would be as absurd, in such a state society, to reproach the giver of a bribe with corrupting the virtue of public servants, as would be to say that the traveller who delivers his money when a pistol is held to his bree corrupts the virtue of the highwayman. We would by no means be understood to say the India, under the British Government, is in a state answering to this last description. St we fear it is undeniable that corruption does prevail to a great extent among the low class of public functionaries; that the power which those functionaries possess rendered them formidable to the body of the people; that in the great majority of cases t receiver of the bribe is really the tempter, and that the giver of the bribe is really acti in self-defence. Under these circumstances, we are strongly of opinion that it would unjust and cruel to punish the giving of a bribe in any case in which it could not be prov that the giver had really by his instigations corrupted the virtue of a public servant w unless temptation had been put in his way, would have acted uprightly.

Presy. Mag., or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

Ct. of Ses.,

Taking gratification in order, by corrupt or illegal means, to influence public servant.

162. Whoever accepts or obtains, or agrees to accept or attempts to o tain, from any person, for himself or for any oth person, any gratification whatever, as a motive or ward for inducing, by corrupt or illegal means, a public servant to do or to forbear to do any offic act, or in the exercise of the official functions of such public servant to she favour or disfavour to any person, or to render or attempt to render any servi-

or disservice to any person, with the Legislative or Executive Government India, or with the Government of any presidency, or with any Lieutenant-G vernor, or with any public servant, as such, shall be punished with impriso ment of either description for a term which may extend to three years, or wi fine, or with both.

THE evidence of the person who bribes is admissible against the person bribed. person who accepts, for himself or for some other person, a gratification for inducing.

(ofe - Sp. 162 + 163 only apply to cases [where the harty was is to exer Curruptor undue influence does so for a . If he does as witnet

HAP. IX.] OFFENCES RELATING TO PUBLIC SERVANTS. [Secs. 163-165.

orrupt or illegal means, a public servant to forbear to do a certain official act, is punishhle, not under s. 161, but under s. 162 of the Penal Code.—QUBEN v. OBHOY GHURN CHUCKERBUTTY, 3 W., R. 19. [Glover, J. May 30, 1865]

A CONVICTION, on a charge of attempting to receive a gratification for influencing a mblic servant in the exercise of his public functions, is illegal as disclosing no legal offence when it omits to state the person or persons for whom the gratification was obtained, or the mblic servant to be influenced in the exercise of his public functions. A Judge ought to explain to the jury the legal construction to be put on a document relied on by the prosemtion.—QUEEN v. SETUL CHUNDER BAGCHEE, 3 W. R. 69. [Kemp and Seton-Karr,]]. Aug. 29, 1865.]

163. Whoever accepts or obtains, or agrees to accept or attempts to ob- Presy. Mag. tain, from any person, for himself or for any other or Mag. of

Taking gratification for ex-trine of personal influence person, any gratification whatever, as a motive or re-mits gublic servant.

Ist class.

Uncog.

Ward for inducing, by the exercise of personal influence ward for inducing, by the exercise of personal influence.

Bailable. ence, any public-servant to do or to forbear to do any official act, or in the ex-Bailable. grise of the official functions of such public servant to show favour or disfavour Not comp. to any person, or to render or attempt to render any service or disservice to any

person with the Legislative or Executive Government of India, or with the Government of any presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust, are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

164. Whoever, being a public servant, in respect of whom either of the Ct. of Ses., Punishment for abetment; offences defined in the last two preceding sections Presy. Mag., public servant of offence is committed, abets the offence, shall be punished class. by public servant of offence above defined. with imprisonment of either description for a term Uncog. which may extend to three years, or with fine, or with both.

Summons.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

165. Whoever, being a public servant, accepts or obtains, or agrees to Presy. Mag. Public servant obtaining any valuable thing, without consideration, from person concerned in any proceeding or business transacted by such public servant.

accept or attempts to obtain, for himself or for any or Mag. of 1st other person, any valuable thing, without consider- Uncog. ation, or for a consideration which he knows to be in- Summons. adequate, from any person whom he knows to have Bailable. been, or to be, or to be likely to be. concerned in any

proceeding or business transacted, or about to be transacted, by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows. to be interested in, or related to, the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with L fine, or with both.

In see 164 the abotto 125 is more Sever to the begon abouted adullary the abetter

Bailable, Not comp.

Illustrations.

- (a.) A, a Collector, hires a house of Z, who has a settlement-case pending before it it is agreed that A shall pay fifty rupees a month, the house being such that, if the bar were made in good faith, A would be required to pay two hundred rupees a month. All obtained a valuable thing from Z without adequate consideration.
- (b.) A, a Judge, buys of Z, who has a case pending in A's Court, Government missory notes at a discount when they are selling in the marketest a premium. A li obtained a valuable thing from Z without adequate consideration.
- (c.) Z's brother is apprehended and taken before A, a Magistrate, on a charge of pirry. A sells to Z shares in a bank at a premium when they are selling in the market a discount. Z pays A for the shares accordingly. The money so obtained by A is a luable thing obtained by him without adequate consideration.

Rulings.

A PATWART taking grain as a consideration for showing favour to the giver in the charge of his functions as patwari should be convicted under s. 161 (and not s. 163) of Penal Code.—QUEEN v. MUDSCODDEEN, 2 N.-W. P. 148. [Spankie, J. April 29, 187]

WHERE a complaint charged a person who was one of the public servants mention in s. 167 of the Criminal Procedure Code with committing acts which, if committed in private individual, would have constituted the offence of extortion, it was held that it not illegal to treat the charge as a charge of extortion, and to proceed with the trial without sanction for the prosecution.—Reg. v. Parshram Keshav, 7 Bom. H. C. R. 61. [Gilland Melvill, J]. July 28, 1870.]

K, a police-officer, employed in a Criminal Court to read the diaries of cases investigated by the police, and to bring up in order each case for trial with the accused and winesses, after a case of theft had been decided by the Court in which the persons accuse were convicted, and a sum of money, the proceeds of the theft, had been made over by the order of the Court to the prosecutor in the case, asked for, and received from the procutor, a portion of such money, not as a motive or reward for any of the objects describe in s. 161 of the Penal Code, but as "dasturi." Held that K was not, under these circumstances, punishable under s. 161 of the Penal Code, but under s. 165 of that Code.—EPRESS v. KAMPTA PRASAD, I. L. R., 1 All. 530. [Stuart, C.J., and Spankie, J. Dec. 1877.]

The accused was charged with having received illegal gratifications from C and C on three specific occasions in 1876. In 1876, 1877, and 1878, C and Co. were doing but ness as Commissariat contractors, and the accused was the manager of the Commissariat Contractors, and the accused was the manager of the Commissariat contractors, and the accused was the manager of the Commissariat form of the Evidence of similar but unconnected instances of receiving illegal gratifications from C and Co. in 1877 and 1878 was not admissible against him under ss. 5 in 3 of the Evidence Act. Held per Garth, C.J. (Maclean, J., concurring)—The evidence was not admissible under s. 14. Per Garth, C.J.—S. 14 applies to cases where a particular is more or less criminal or culpable according to the state of mind or feeling of the person who does it; not to cases where the question of guilt or innocence depends upactual facts, and not upon the state of a man's mind or feeling. Per Mitter, J—If there is the illegal gratifications mentioned in the charge be considered proved by othe evidence, and if it were necessary to ascertain whether the accused received them as motive for showing favour in the exercise of his official functions, the alleged transaction of 1877 and 1878 would be relevant under s. 14, but they would not be relevant to establish the fact of payments in 1876.—Empress v. M. J. Vayapoory Moodellar, I. L. R., 6 Ci 655; 8 C. L. R. 197. [Garth, C.J., and Mitter and Maclean, JJ. Jan. 22 and Feb. 9, 1881

Presy Mag. or Mag. of 1st or 2nd class. Uncego Summons. Bailable. Not comp.

Public servant disobeying of the law as to the way in which he is to conduct himself as such public servant, intending to cause to any person.

Of the law as to the way in which he is to conduct himself as such public servant, intending to cause to any person.

or knowing it to be likely that he will, by such distribution obedience, cause injury to any person, shall be punished with simple imprison ment for a term which may extend to one year, or with fine, or with both.

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OFFENCES RELATING TO PUBLIC SERVANTS. [SEC. 167.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy aree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direcof law, with the knowledge that he is likely thereby to cause injury to Z. A has comted the offence defined in this section.

Rulings.

, at CHARGE.—That you, on or about the day of , did [or omitted as the case may be], such conduct being contrary to the provisions of Act , and thereby committed an offence , and known by you to be prejudicial to ishable under s. 166 of the Indian Penal Code, and within [my cognizance, or the cogance of the Court of Session (or High Court)].—Crim. Pro. Code (Acta X. of 1882), ı v. form xxwiii. (i.)

A POSTMASTER, who absents from his station without leave, and thereby causes delay be despatch of the mails, should be convicted under 5. 47 of the Post-office Act (XIV. 366), and not under s. 166 of the Penal Code.—Weir, p. 31.

A witness summoned to produce a document shall, if it is in his possession or power, ing it to Court, notwithstanding any objection which there may be to its production or s admissibility. The validity of any such objection shall be decided on by the Court. Court, if it sees fit, may inspect the document, unless it refers to matters of State, or e other evidence to enable it to determine on its admissibility. If for such a purpose necessary to cause any document to be translated, the Court may, if it thinks fit, dithe translator to keep the contents secret, unless the document is to be given in eviare; and if the interpreter disobeys such direction, he shall be held to have committed offence under s. 166 of the Penal Code.—Evidence Act (I. of 1872), s. 162.

ANY marriage-registrar, knowingly and wilfully issuing any certificate for marriage the expiration of three months after the notice has been entered by him as aforesaid, knowingly and wilfully issuing, without the order of a competent Court authorizing him to do, any certificate for marriage, where one of the parties intending marriage is a bor, before the expiration of fourteen days after the entry of such notice, or any certithe issue of which has been forbidden as aforesaid by any person authorized by him this behalf, shall be deemed to have committed an offence under s. 166 of the Penal de.—Christian Marriage Act (XV. of 1872), s. 72.

167. Whoever, being a public servant, and being, as such public servant, Presy. Mag., charged with the preparation or translation of any or Mag. of 1st document, frames or translates that document in a class.

Uncog. Public servant framing an orrect document with inmanner which he knows or believes to be incorrect, Summons. to cause injury. leading thereby to cause, or knowing it to be likely that he may thereby cause, Bailable. pary to any person, shall be punished with imprisonment of either descrip. Not comp. in for a term which may extend to three years, or with fine, or with both.

Accessed, a village patwari, prepared an incorrect copy of an entry in his rosnamcha r.S. plantiff in a civil suit. The entry related to a contract between S and another. considered was convicted, under s. 167, of framing an incorrect document as a public servant. (Ar Lindsay, J.) that the conviction was right.—HIRA SINGH v. CROWN, Panj. Rec.,

ACCUSED, a copyist in the Small Cause Court office, framed an incorrect copy of a cument filed with a certain record, by adding a name not contained in the original. The correct copy was delivered duly certified to one L D, the applicant for it, and who was while in collusion with the copyist. This copy was afterwards made use of in a suit Prince the person whose name had been fraudulently added, and then the fraud was de-The Magistrate convicted accused under s. 167, and ordered him to pay a fine of Held that s. 167 was not applicable to the case, as it was not shown that accused knew it to be likely that he would cause injury to any person, but that the activation of the committed the offence of "issuing or signing a false certificate" within the meanof a 197. Held also (per Barkley,].) that making what purports to be a copy of a

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SECS. 163-171.] OFFENCES RELATING TO PUBLIC SERVANTS. [CHAP. I.

document is not included in the words "preparation or translation of any document," as used in s. 167.—Crown v. Driv Singh, Panj. Rec., No. 15 of 1879.

Presy. Mag. or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

Ditto.

168. Whoever, being a public servant, and being legally bound, as such public servant unlawfully public servant, not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant unlawfully buying or bidding for property.

In shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine or with both; and the property.

Public servant, not to purchase or bid for certain property, purchases or bids for that property, either his own name or in the name of another, or jointly which may extend to two years, or with fine or with both; and the property.

Where a sub-inspector of police was charged with having purchased a pony what had been impounded, it was held that the Magistrate should have proceeded under s. Act I. of 1871, taken with s. 169 of the Penal Code, and that the accused could pot convicted under s. 406 of the Penal Code of criminal breach of trust—In the Mattor Rajkristo Biswas, 16 W. R. 52; 8 B. L. R., Ap., 1. [Kemp, Offg. C.]., and Ai

lie, J. Sep. 25, 1871.]

Any Mag. Cognizable. Warrant. Bailable. Not comp. Personating a public servation with imprisonment of either description for a technical wars.

170. Whoever pretends to hold any particular office as a public servation with servation and presented with interest any other person holding such office, in such assumed character does or attempts to do any act under colour of servation for a technical with imprisonment of either description for a technical which may extend to two years, or with fine, or with both.

The prisoner, having passed himself off as a police-officer, and cheated several vigers out of money, was held guilty of cheating and falsely personating a public serving —QUEEN v. SADANUND DOSS alias SONA BISWAS, 2 W. R. 29. [Kemp,]. Jan. 30, 18

WHERE more than one offence is proved in respect of which the accused has be charged and tried, a conviction for each such offence must follow, whether s. 71 of Penal Code applies to the case or not; and, subject to the provisions of s. 71, a sepa sentence must be passed in respect of each such conviction. Under s. 35 of the Crim Procedure Code, sentences of imprisonment cannot be passed so as to run concurre In a trial for offences under ss. 170 and 383 of the Penal Code, committed in the transaction, it appeared that but for personating a public servant, the accused would have been in a position to commit the act of extortion complained of. Held that the and second paragraphs of s. 71 of the Penal Code did not apply to the case; that the paragraph also did not apply, because the words "constitute an offence" refer to the finitions of offences contained in the Code irrespective of the evidence whereby the complained of are proved, and personating a public servant as defined in s. 170 was, constituent element of extortion as defined in s. 383; that in the present case the following offence was completed before the latter had begun; and that separate sentences for offence were, therefore, not illegal.—QUEEN-EMPRESS v. WAZIR JAN, I. L. R., 10 41 [Mahmood, J. Sep. 16, 1887.]

Any Mag. Cognizable. Summons. Railable. Not comp. Wearing garb or carrying token used by public servant with fraudulent intent.

Wearing garb or carrying token used by public servant with fraudulent intent.

The wearing garb or carrying token used by that class of public servants with intention that it may be believed, or with the kn

ledge that it is likely to be believed, that he belongs to that class of pu servants, shall be punished with imprisonment of either description for a twhich may extend to three months, or with fine which may extend to two dred rupees, or with both.

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Omission or evasion of the public suits for the Refusing to time true unformation (to right taling), bour giving tales information, (4) to trusting or disobe CONTEMPTS OF LAWFUL AUTHORITY, &c.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172. Whoever absconds in order to avoid being served with a summons, Any Mag.

notice, or order proceeding from any public servant Uncog. beconding to avoid service legally competent, as such public servant, to issue Bailable. remmons or other proceedsuch summons, notice, or order, shall be punished Not comp. from public servant. h simple imprisonment for a term which may extend to one month, or with Sanction.

e which may extend to five hundred rupees, or with both; or if the summons, lice, or order is to attend in person or by agent, or to produce a document in Court of Justice, with simple imprisonment for a term which may extend to menths, or with fine which may extend to one thousand rupees, of with both.

A WARRANT addressed to a police-officer to apprehend an offender, and to bring him ore the Magistrate is not a "summons, notice, or order" within the meaning of s. 172 the Penal Code; and the offence of absconding by an offender, against whom a warrant been so issued, is not punishable under that section. Such a case must be dealt with der the Criminal Procedure Code.—Queen v. Womesh Chunder Ghose, 5 W. R. 71; Nym. 61. [Peacock, C.J., and Norman and Campbell, JJ. April 18, 1866.]

S. 172 of the Penal Code applies to a witness who absconds to evade service of warat issued under ss. 188 to 190 of the Code of Criminal Procedure, while s. 183 of the ter Code applies to a party who absconds.—In the Matter of Hossein Manjee, 9 R. 70. [Loch and Glover, J]. May 19, 1868.]

As accused person, against whom a proclamation has been issued, must, until he has rrendered, be regarded as in contempt, and the Court will not entertain any application his behalf.—QUEEN v. BISHESHUR PERSHAD, 2 N.-W. P. 441. [Morgan, C.], and Ross, mer, Spankie, and Turnbull, JJ. Dec. 3, 1870.]

A WARRANT addressed to a nazir by a Civil Court for the arrest of a defendant in exetion of a decree is not a notice, summons, or order within the meaning of s. 172 of the mal Code-Queen v. Zahoor Ali Khan, 4 N.-W. P. 97. [Spankie, J. June 26, 1872.]

It is illegal to punish a person under s. 172 for absconding to prevent the execution a warrant issued against him, as a warrant is neither a summons nor a notice, but is

ressed to the officer required to execute it, not to the person whose attendance is re-Such a case must be dealt with under the Criminal Procedure Code.—QUEEN v. BIR JAN, 7 N.-W. P. 302. [Spankie, J. May 28, 1875.]

A COLLECTOR, who, in order to draw up a report for the information of Government,

ids a departmental inquiry into the conduct of a tahsildar accused of extortion in the scharge of his executive duties, is authorized, under the provision of Mad. Act III. of 1869, issue summonses for the attendance of persons whose evidence may appear to him cessary for the investigation. In order to prove the commission of an offence under s. 172 the Penal Code, the prosecutor must show that a summons, notice, or order has been med, and that the accused knew, or had reason to believe, that it had been issued. To scond to avoid the service of process which has not issued is no offence under s. 172 of e Penal Code. Absconding does not necessarily imply change of place, but may be ected by concealment. It a person, having concealed himself before process issues ntinues to do so after it has issued, he absconds.—Srinivasa Ayyangar v. Reg., I. L. , 4 Mad. 393. [Turner, C.J., and Muttusami Ayyar, J. Dec. 2, 1881.]

EXCEPT as provided in ss. 477, 480, and 485 (of Act X. of 1882), no Judge of a Criinal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon, d the Presidency Magistrates, shall try any person for any offence referred to in s. 195 Act X. of 1882), when such offence is committed before himself or in contempt of his thority, or is brought under his notice as such Judge or Magistrate in the course of a dicial proceeding. Nothing in s. 576 or s. 482 (of Act X. of 1882) shall prevent a Mastrate, empowered to commit to the Court of Session or High Court, from himself comitting any case to such Court, or shall prevent a Presidency Magistrate from himself spong of any case instead of sending it for inquiry to another Magistrate.—Crim. to Code (Act X. of 1882), s. 487.

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S. 195 of the new Code of Criminal Procedure (Act X, of 1882) lays down: Court shall take cognizance of any offence punishable under ss. 172 to 188 (both inclusive) the Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate * sanction referred to in this section may be expressed in general terms, and need not nat the accused person; but it shall, so far as practicable, specify the Court or other place which, and the occasion on which, the offence was committed. When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Presy. Mag., or Mag. of 1st or and class. Uncog. Summons **Baila**ble. Not co Sanction.

of.

Preventing service of summons or other proceeding, or preventing publication there-

178. Whoever in any manner intentionally prevents the serving on him self, or on any other person, of any summons, notice or order proceeding from any public servant, legal competent, as such public servant, to issue such sur mons, notice, or order, or intentionally prevents to

lawful affixing to any place of any such summons, notice, or order, or intertionally removes any such summons, notice, or order from any place to white it is lawfully affixed, or intentionally prevents the lawful making any proclamation under the authority of any public servant legally comp tent, as such public servant, to direct such proclamation to be made, shall punished with simple imprisonment for a term which may extend to one mont or with fine which may extend to five hundred rupees, or with both; or, if t summons, notice, order, or proclamation, is to attend in person or by agent, to produce a document in a Court of Justice, with simple imprisonment for • term which may extend to six months, or with fine which may extend to or thousand rupees, or with both.

Refusing to sign a summons by an accused person does not constitute the offence intentionally preventing the service of a summons on himself under s. 173 of the Per Code.—Reg. v. Kalya bin Fakir, 5 Bom. H. C. R. 34. [Newton, Offg. C.J., and Tuck April 15, 1868.]

A REFUSAL to give a receipt for a summons is not an offence under s. 173 of the Per Code.—In re BHOOBUNESHUR DUTT, I. L. R., 3 Cal. 621; 2 C. L. R. 80. Mitter, J. Dec. 14, 1877.]

A REFUSAL to receive a summons is not an offence under s. 173 of the Penal Code REG. v. Punamalai, I. L. R., 5 Mad. 199. [Kernan and Kindersley, JJ. April 28, 188

A MERE refusal to sign a receipt for a summons is not an offence under s. 173 s. 180 of the Penal Code.—QUEEN-EMPRESS v. KRISHNA GOBINDA DAS, I. L. R., 200 358. [Pigot and Rampini, JJ. Aug. 25, 1892.]

Any Mag. Uncog. Summons. Bailable. Not comp. Sanction.

174. Whoever, being legally bound to attend in person or by an agent a certain place and time in obedience to a summor Non-attendance in obedience to an order from a public notice, order, or proclamation proceeding from a servant. public servant, legally competent, as such public s

vant, to issue the same, intentionally omits to attend at that place or time, departs from the place where he is bound to attend before the time at which is lawful for him to depart, shall be punished with simple imprisonment for term which may extend to one month, or with fine which may extend to f hundred rupees, or with both; or, if the summons, notice, order, or proclam tion is to attend in person or by an agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine whi may extend to one thousand rupees, or with both.

Illustrations.

(a.) A, being legally bound to appear before the Supreme Court at Calcutta_in ober ence to a subpoena issuing from that Court, intentionally omits to appear. A has con mitted the offence defined in this section.

(8.) A, being legally bound to appear before a Zilla Judge, as a witness, in obedience temphons issued by that Zilla Judge, intentionally omits to appear. A has committed offence defined in this section.

Rulings.

THERE is nothing in s. 219, Code of Criminal Procedure (Act XXV. of 1861), which is an accused person, who has forfeited his bail-bond by default of appearance, from grocceded against under s. 179 of the Penal Code, notwithstanding that his suret paid the penalty mentioned in the recognizance.—In THE MATTER OF TAJVOMUDDD DEER, 10 W. R. 4. [Phear and Hobbouse,]]. June 2, 1861.]

8. 174 of the Penal Code does not apply to the case of a defendant escaping from buy under a warrant in execution of a decree of a Civil Court.—Reg. v. SARDAR PATHU, but. H. C. R. 38. [Newton and Tucker, JJ. Aug. 12, 1863.]

WHERE a person disobeyed a proclamation, it was held that he was punishable under par Queen v. Womesh Chunder Ghose, 5 W. R. 71; I Wym. 61. [Peacock, C.J., Horman and Campbell, JJ. April 18, 1866.]

MAGISTRATES may, under the Criminal Procedure Code, issue summons for service witnesses beyond the limits of their districts.—Pro., Aug. 18, 1866, 3 Mad. H. C. R., L.

A MAGISTRATE can take cognizance of an offence under s. 174, Penal Code, commitageinst his own Court. An order of forfeiture, under s. 148, Code of Criminal Procedure, instantially legal, cannot be disturbed for an immaterial error of procedure.—BAIJOO BLV. GUNGUN MISSER, 8 W. R. 61. [Jackson and Hobhouse, JJ. Aug. 13, 1867.] Overliby Queen v. Chandra Sekhar Roy, 5 B. L. R. 100; 13 W. R. 66, infra.

THE Chairman of Municipal Commissioners appointed under Act XXVI. of 1850, logs a public servant, is not legally competent as such to issue an order for attendable before him. Held accordingly that disobedience of such an order was not an offence in a 174 of the Penal Code.—Reg. v. Purshotam Valji, 5 Bom. H. C. R. 33. [New-Offg. Cff., and Tucker, J. April 15, 1868.]

A CONVICTION under s. 174 of the Penal Code for "having intentionally omitted to be the mahalkari's kachahri to give evidence in a revenue-case under ss. 26 and 29 of XVII. of 1827, though the summons issued was duly served upon the accused," was fillegaf.—Reg. v. Narrinappa Comte, 5 Bom. H. C. R. 39. [Newton, Offg. C.J., and page, J. May 20, 1868.]

A CONVICTION for non-attendance in obedience to an order from a public servant, her s. 174, Penal Code, cannot be had, unless the person summoned was legally bound to had, and refused or intentionally omitted to attend. A witness was summoned by a leg of a Small Cause Court to attend on a certain day to give evidence in a certain case. hore that day, however, the case was adjourned, and the witness was not served with a hammons or notification of the adjournment. Not having attended when the case heard, he was fined Held that, not having been re-summoned, the witness was not not to attend.—In the Matter of Sreenath Ghose, 10 W. R. 33. [Jackson and bhouse, J]. Sep. 8, 1868.]

Bapore a fine can be inflicted under s. 174, Penal Code, for non-attendance, it must proved that such non-attendance was in the nature of a wilful disobedience —QUEEN UNGUN LALL, I N.-W. P. 303. [Pearson and Turner,]]. July 2, 1869.]

In India it is not illegal to serve a summons, notice, or order on a Sunday.—4 Mad. 1. 347, No. 1453, 1869.

The defendant was arrested by warrant, and was released on bail to appear before the visitates on a specified day. The defendant appeared on that, day, but the Magistrate in unable to take up the case, a verbal order was given to the defendant to appear on following day. This he omitted to do, and was convicted under s. 174 of the Penal ide. Held that the conviction was good.—Pro., Jan. 18, 1870, 5 Mad. H. C. R., Ap., 15.

HBLD, overruling Baijoo Baul v. Gungun Misser (8 W. R. 61), that a Magistrate mant take cognizance of an offence under s. 174, Penal Code, committed against his in Court, but is bound, under s. 171 of the Code of Criminal Procedure, to send the refor trial before another Magistrate. The only cases under the Criminal Procedure

Code in which a Sessions Judge or Magistrate can try a case in which he is himself interested pointed out.—Queen v. Chandra Sekhar Roy, 13 W. R. 66; 5 B. L. R. 100. [Jac son and Glover, JJ. April 23, 1870.]

A MAGISTRATE cannot issue a warrant of arrest against a witness under s. 260 of the Code of Criminal Procedure unless he is first satisfied that the witness has disobered summons which was served on him. In order to make a person summoned as a witne liable under s. 174 of the Penal Code, the fact must be that he intentionally omitted to tend at the place or time mentioned in the summons, or that he wilfully departed from the place where he had attended before the time at which it was lawful for him to depart. Queen v. Sutherland; Queen v. Narain Singh, 14 W. R. 20. [Phear and Dwark nath Mitter, JJ. July 20, 1870.]

The accused was convicted upon a charge that he, being summoned as a defenda in a case of trespass, left the Court without permission, and thereby disobeyed the summons. The Sub-Magistrate gave the accused a verbal order to appear when required, but the Magistrate did not adjourn the case to any particular day. Held that the conviction was bad.—Pro., Dec. 22, 1870, 6 Mad. H. C. R., Ap., 10.

QUEEN 7. CHANDRA SEKHAR ROY (13 W. R. 66; 5 B.L. R. 100), ruling that a Coubefore which an offence is committed under ch. 10 of the Penal Code cannot try the on itself, followed, notwithstanding the argument of the Sessions Judge in this case that the ruling should apply only to certain cases under ch. 10.—Chutoorbhooj Bharthee 2. M. MACNAGHTEN, 15 W. R. 2. [Bayley and Mitter, JJ. Jan. 18, 1871.]

A MAHALKARI invested with the powers of a Second-class Subordinate Magistrate cannot issue a summons under s. 8 of Act XI. of 1843, nor can a person be convicted und s. 174 of the Penal Code for having disobeyed such a summons so issued.—Reg. v. Verkaji Bhaskar, 8 Bom. H. C. R. 19. [Lloyd and Kemball, JJ. April 13, 1871.]

Accused was summoned as a witness in a case to be heard on 27th May. The summons was not served personally on accused, but affixed to the door of his house. On the appointed date the case was not taken up, but was adjourned by public proclamation and June 5th. On this latter date accused failed to attend. For this he was convicted of offence under s. 174 of the Penal Code. There was no evidence that the summons been brought to the knowledge of the accused so as to require him to attend on the fire occasion. Held that, on the ground of there being no evidence of the commission of a offence, the conviction must be quashed. The adjournment of a trial by public proclamation is irregular and objectionable.—Proc., Aug. 1, 1871, 6 Mad. H. C. R., Ap., 29.

A MAGISTRATE, while travelling in his district, tried a case partly at a place, and the fixed Sunday next at noon for further trial of the case, to be held in another village. Of the Sunday the witnesses for the defence came to the village, but at 3 P. M. instead of noon The Magistrate, after waiting an hour beyond the time fixed, moved to the next village, as subsequently sentenced the defaulting witnesses, under s. 174 of the Penal Code, to a month's simple imprisonment. The High Court, on reference, quashed the conviction.

Queen v. Hargobind Datta Sirkar, 8 B. L. R., Ap., 12. [Jackson and Mookerjee,]

Aug. 14, 1871.]

A SUB-MAGISTRATE convicted certain persons, under s. 174 of the Penal Code, old obedience to summonses issued by him as tahsildar. Held that the convictions under the first part of s. 174 were sustainable. Mad. Act III. of 1869 gives a tahsildar power issue summonses—Pro., Nov. 30, 1871, 6 Mad. H. C. R., Ap., 44.

A WARRANT issued under s. 76 of the Code of Criminal Procedure should be sealed and should describe the person to be apprehended under it with reasonable particularly, that there may be no difficulty in establishing his identity, and should be subscribed with name and full official title of the Magistrate issuing it. Where a warrant was defect in all the above particulars, the prisoner apprehended under it was released by the Hig Court.—In re James Hastings, 9 Bom. H. C. R. 154. [Sargent, J. Jan. 20, 1872.]

A CONVICTION under s. 174 of the Penal Code, for disobeying a verbal order of a V-lage Magistrate, is good—Pro., Feb. 20. 1872, 7 Mad. H. C. R., Ap., 3.

BEFORE convicting a person under s. 174 of the Penal Code, it is necessary to protect that he had notice to appear at a certain time and place, and that he did not do so. IN THE MATTER OF SHIB PERSHAD CHUCKERBUTTY, 17 W. R. 38. [Bayley and Markb J]. Mar. 9, 1872.]

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Accused was convicted, under s. 174 of the Penal Code, of disobedience to a summons addressed to him as defendant in a suit brought before the Collector under Reg. VI. f 1831. The summons did not specify the place at which his attendance was required. Ield that on this ground the conviction was illegal.—Pro., Dec. 20, 1872, 7 Mad. H. C. R., sp., 14.

COMPLAINANT, a batta-peon, arrested defendant on a warrant, and asked him to follow im. Defendant promised to do so, went into his house on the pretext of fetching a turian, and absconded. Held that a conviction under s. 174 of the Penal Code was illegal.—PRO., Jan. 5, 1875, 7 Mad. H. C. R., Ap., 43.

A COLLECTOR who, in order to draw up a report for the information of Government, solds a departmental inquiry into the conduct of a tahsildar accused of extortion in the lischarge of his executive duties, is authorized, under the provision of Mad. Act III. of 1869, possue summonses for the attendance of persons whose evidence may appear to him necessary for the investigation. In order to prove the commission of an offence under s. 172 of the Penal Code, the prosecutor must show that a summons, notice, or order has been ssued, and that the accused knew, or had reason to believe, that it had been issued. To the Penal Code. Absconding does not necessarily imply change of place, but may be effected by concealment. If a person having concealed himself before process issues, continues to do so after it had issued, he absconds.—SRINIVASA AYYANGAR v. REG., I. L. R., 4 Mad. 193. [Turner, C.]., and Muttusami Ayyar. J. Dec. 2, 1881.]

A SUMMONS should be clear and specific in its terms as to the title of the Court, the place at which, the day, and the time of the day, when the attendance of the person summoned is required, and it should go on to say that such person is not to leave the Court without leave, and, if the case in which he has been summoned is adjourned, without ascertaining the date to which it is adjourned. Where a summons did not mention the place at which, or the time of the day when, the attendance of the person summoned was required, held that such person could not lawfully be punished under s. 174 of the Penal Code for non-attendance in obedience to such summons.—Empress v. Ram Saran, I. L. R., 5 All. 7. [Straight, J. July 7, 1882.]

A SUMMONS issued by a tahsildar to a village-karnam to appear and give information required for the preparation of census, jamabandi, and daul accounts, is not within the perview of Mad. Act III. of 1869, and disobedience of such a summons is not an offence under s. 174 of the Penal Code.—Quben v. Vanam Subramanyam, I. L. R., 5 Mad. 377. [Muttusami Ayyar and Tarrant, JJ. Aug. 5, 1882.] Overruled by Queen-Empress v. Subbana, I. L. R., 7 Mad. 197, infra.

The provisions of s. 174 of the Penal Code are not in conflict with the special provisions of ss. 15 and 16 of Reg. IV. of 1816 (Mad.). In ordinary cases disobedience to the summons of a village-munsif should be dealt with under the Regulation. But if a charge is laid under the Penal Code, the Criminal Court must deaPwith it.—QUEEN v. RAMACHANDRAPPA, I. L. R., 6 Mad. 249. [Turner, C.J., and Muttusami Ayyar, J. Jan. 25, 1883.]

UNDER Mad. Act III. of 1869, Collectors and their subordinate officers may issue a summons for the purpose of any inquiry, however general, which they are empowered to make for the purpose of administration.—Queen-Empress v. Subbana, I. L. R., 7 Mad. 197. [Turner, C.J., and Kernan, Kindersley, and Muttusami Ayyar, JJ. Sep. 28, 1883.] Overrules Queen v. Vanam Subramanyam, I. L. R. 5 Mad. 377, supra.

S. i60 of the Code of Criminal Procedure, which authorizes a police-officer making an investigation under ch. 5 of the Code to require the attendance before himself of any person (within certain limits) who appears to be acquainted with the circumstances of the case, does not empower such officer to require the attendance of an accused person to answer the complaint made against him—Queen-Empress v. Saminada, I. L. R., 7 Mad. 274. [Turser, C.J., and Kernan, Kindersley, and Muttusami Ayyar, JJ. Nov. 15, 1883.]

A MAN who, in obedience to a summons to appear and answer a criminal charge, attends a Magistrate's Court, but, finding the Magistrate not present at the time mentioned in the summons, departs without waiting for a reasonable time, is guilty of an offence under s. 174 of the Penal Code.—QUEEN-EMPRESS v. KISAN BAPU, I. L. R., 10 Bom. 93. [Nanabhai Haridas and Wedderburn, JJ. Aug. 18, 1885.]

Any police-officer making an investigation under ch. xiv. of the Code of Criminal Procedure (Information to Police, and their Powers to Investigate) may, by order in writing,

require the attendance before himself of any person being within the limits of his dang any adjoining station who, from the information given or otherwise, appears to be a quainted with the circumstances of the case; and such person shall attend as so requime. Crim. Pro. Code (Act X. of 1882), s. 160.

A REVENUE-OFFICER sent a yadast to a Third-class Magistrate, charging a certain son with having disobeyed a summons issued by the revenue-officer. The Third-class gistrate thereupon tried and convicted the accused under s. 174 of the Penal Code. The District Magistrate referred the case on the ground that the conviction was bad under a 530 (k) of the Code of Criminal Procedure. Held that as the yadast amounted to a separation within the meaning of s. 4, although the complainant was not examined on the complainant was not examined on the complainant was not examined on the complainant was not examined to a separation of the complainant was not examined to a separation of the code of Criminal Procedure. as required by s. 200, the conviction was not illegal.—QUEEN-EMPRESS v. Monu, L.L. & [Muttusami Ayyar and Parker, JJ. July 18, 1888.]

THE accused, who were parties to a petition pending in a District Court, were a moned by a tahsildar to give evidence on an inquiry by him as to whether or not the tioner was a pauper. They omitted to attend on the summons, and were charged, is at spect of such non-attendance, under s. 174 of the Penal Code, and were convicted . the conviction was bad, the tahsildar not being authorized to issue the summons make Act III. of 1869 (Madras).—Queen-Empress v. Varathappa Chetti, I. L. R., 18 Mm 297. [Collins, C.J., and Muttusami Ayyar, J. Mar. 7, 26, 1889.]

It is not an offence under the Penal Code, s. 174, to disobey a summons issued by a British Magistrate directing the person summoned to appear before him at a place outside British territory.—Queen-Empress v. Paranga, I. L. R., 16 Mad. 463. [Muttusami Ayyar and Shephard, JJ. Mar. 29, 1893.]

Court in which offence committed, subject to provisions of ch. 35; or (if not committed in Court), Presy. Mag. or Mag. of 1st or and class. Uncog. Summons Railable. Not comp.

Sanction.

Omission to produce document to public servant by per-son legally bound to produce

sand rupees, or with both.

175. Whoever, being legally bound to produce or deliver up any document to any public servant as such, intentional omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term

which may extend to six months, or with fine which may extend to one thou-Illustration.

A, being legally bound to produce a document before a Zilla Court, intentionally omits to produce the same. A has committed the offence defined in this section,

Rulings.

WHEN any Civil, Criminal, or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in s. 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first-class, and may send the accused in custody, or take sufficient security for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial. Such Magistrate shall thereupon proceed according to law, and may, if he is authorized under s. 192 to transfer cases transfer the inquiry or trial to some other competent Magistrate.—Crim. Pro. Code (Act X. of 1882), s. 476.

WHEN any such offence as is described in s. 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid. Nothing in s. 443 or 444 shall be deemed to apply to proceedings under this section. Crim. Pro. Code (Act X. of 1882), s. 480.

COURT other than the High Court, &c., can try persons for offences committed fore itself only in cases to which s. 477, 480, or 485, is applicable, and none of these ctions is applicable when the accused is charged under s. 175 of the Penal Code. JEEN-EMPRESS v. Sashayya, I. L. R., 13 Mad. 24. [Collins, C.]., and Wilkinson, J. **Rg. 28**, 1889.

Omission to give notice or commetion to public servant person legally bound to

-176. Whoever, being legally bound to give any notice or to furnish infor- Presy. Mag. mation on any subject to any public servant as such, or Mag. of 1st intentionally omits to give such notice or to furnish Uncog. such information in the manner and at the time re- Summons. quired by law, shall be punished with simple impri- Not comp. mment for a term which may extend to one month, or with fine which may ex- Sanction.

and to five hundred rupees, or with both; or, if the notice or information requirto be given respects the commission of an offence, or is required for the pursee of preventing the commission of an offence, or in order to the apprehension an offender, with simple imprisonment for a term which may extend to six conths, or with fine which may extend to one thousand rupees, or with both.

In this section the word "offence" has the same meaning when the thing punishable der the special or local law is punishable under such law with imprisonment for a term i six months or upwards, whether with or without fine.—S. 40, Penal Code.

A PRISONER cannot be punished under s. 118, as there was no omission of an act which e was bound to perform which facilitated the commission of an offence; but he should be soluted under s. 176, Penal Code, as he was bound to report under s. 138, Act XXV. of Mr, after he was informed of the robbery.—Govr. v. Kesree, 1 Agra H. C. R. 37. Turner, J., and Spankie, Offg. J. Dec. 21, 1866.]

THE refusal of a person to join in a dacoity does not imply a knowledge on his part of be commission of that offence, or render him liable to punishment, under s. 176 of the Penal ode, for intentional omission to give notice or information for the purpose of preventing be commission of an offence.—QUERN v. LAHAI MUNDUL, 7 W. R. 29. [Kemp and farkby, JJ. Feb. 5, 1867]

THE karnam of a village is not bound to report the commission of offences other than hose specified in s. 138 of the Criminal Procedure Code. The village-munsif is bound to eport the commission of all offences committed in his village to such person and in such nanner as may be most likely to be effectual for the apprehension of the offenders.—Pro., Mar. 12, 1867, 3 Mad. H. C. R., Ap., 30.

A CHARGE should distinctly set forth the particular offence in respect of which the acused either omitted to give information, or gave information which he knew to be false, and it should appear precisely what his duty was in the matter.—Queen v. Moosubroo, W. R. 37. [Jackson and Hobhouse,]]. July 8, 1867.]

S. 176 of the Penal Code applies to persons upon whom an obligation is imposed by aw to furnish certain information to public servants, and the penalty which the law provides sintended to apply to parties who commit an intentional breach of such obligation.—In THE MATTER OF PHOOL CHAND BROJOBASSEE, 16 W. R. 35. [Kemp and Glover, J]. July 29, 1871.]

INTENTIONAL omission is the gist of the offence of a zemindar omitting to give information regarding an offence.—In the Matter of Luchmun Pershad Gorgo, 18 W. R. 22. [Kemp and Glover, JJ. June 24, 1872.]

THE provisions of s. 90 of the Criminal Procedure Code should not be put in force against one who has omitted to give information to the police of an offence having been committed in cases where the police have actually obtained such information from other sources.—In the Matter of Sashi Bhusan Chuckrabutty; Empress v. Sashi Bhusan CHUCKRABUTTY, I. L. R., 4 Cal. 623. [Ainslie and Broughton,]]. Dec. 17, 1878.]

K was condicted under's, 176 of the Penal Code of having intentionally omitted to. inform the police of the presence of V, a proclaimed offender, at a certain village. It was presumed by the Court that V was a proclaimed offender, because it was proved that the property of V had been attached under the provisions of s. 88 of the Code of Criminal

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Procedure, 1882. Held that the prosecutor was bound to prove the fact of proclamation. A person legally bound to give information to the police of the presence of a proclamation offender at a certain place ought not to be prosecuted for omitting to give such infample tion where the police are already aware of the fact.—In re Pandya, I. L.-R., 7 Med. 45 [Brandt, J. April 2, 1884.]

Held (per Prinsep and Macpherson, JJ.).—It is not necessary, in order to support conviction under s. 176 of the Penal Code against a person falling within the provisions s. 45 of the Criminal Procedure Code for not giving information of an occurrence that under cl. d of that section, to show that the death actually occurred on his land, when that the death was sudden, unnatural, or suspicious, the finding of the body being after from which a Court might reasonably infer, in the absence of evidence to the contrary, the death took place there. Held (per Mitter, J.)—It is necessary, to secure a contrary that the death contrary that the death took place there. Held (per Mitter, J.)—It is necessary, to secure a contrary that the death code place there. Held (per Mitter, J.)—It is necessary, to secure a contrary that the death took place or occurred in the village or on the latter case, to prove that the death took place or occurred in the village or on the latter case, to prove that the death took place or occurred in the village or on the latter case, to prove that the death took place or occurred in the village or on the latter case, to prove that the death took place or occurred in the village or on the latter case, to prove that the death took place or occurred in the village or on the latter case, to prove that the death took place or occurred in the village or on the latter case, to prove that the death took place or occurred in the village or on the latter case, to prove that the death took place or occurred in the village or on the latter case, to prove that the death took place or occurred in the village or on the latter case, to prove that the death took place or occurred in the village or on the village or on the village or occurred in the village or on the village or occurred in the village o

UNDER s. 45 of the Code of Criminal Procedure, every owner or occupier of the bound to report the occurrence therein of any sudden death. The head of a Nayar factor was convicted and fined under s. 176 of the Penal Code for not reporting a sudden factor in the family-house. Held (following former decisions of the Court) that the constitution was illegal, because s. 45 of the Code of Criminal Procedure does not apply to the court of a house, —Queen-Empress v. Achutha, I. L. R., 12 Mad. 92. [Collins, C.J., and the tusami Ayyar, J. Oct. 22, 1888.]

Where one of several persons bound to give information to the police under a set the Criminal Procedure Code gave such information as to the commission of a meeting the consequence of which a police-officer arrived in the village shortly after the occurrence held that the fact that other persons who might possibly also be bound to give that formation had omitted to do so was no ground for their prosecution and conviction an anoffence under s. 176 of the Penal Code. In the Matter of the Petition of Saski Binson Chuckrabutty (I. L. R., 4 Cal. 623) relied on.—Queen-Empress v. Gopal Singh, I. L. R., 20 Cal. 316. [Pigot and Rampini, JJ. Aug. 24, 1892.]

EVERY person, whether within or without the presidency-towns, aware of the commission of, or ofthe intention of any other person to commit, any offence pusible under the following sections of the Indian Penal Code (namely), 121, 121, 122, 123, 124, 124A, 125, 126, 130, "143, 144, 145, 147, 148," 302, 303, 304, 382, 392, 393, 394, 305, 395, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absenced reasonable excuse, the burden of proving which shall lie upon the person so aware, for with give information to the nearest Magistrate or police-officer of such commissions at intention.—Crim. Pro. Code (Act. X. of 1882), s. 44 as amended by Act. X. of 1894, s. 1 (which inserts the figures quoted).

EVERY village-headman, village-accountant, village-watchman, village-police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may obtain respecting—

- (a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman, or police-officer, or in which he owns, or occupies land, or is agent, or collects revenue of reat;
- (b) the resort to any place within, or the passage through, such village, of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict, or proclaimed offender;
- (c) the commission of, or intention to commit, in or near such village, any non-bailable offence, or any offence punishable under s. 143, 144, 145, 147, or 148 of the Indian Penal Code;
- (d) the occurrence, in or near such village, of any sudden or unnatural death, or of any death under suspicious circumstances;

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[AP. X.] CONTEMPTS OF LAWFUL AUTHORITY, &c.

[SEC. 177.

(s) the commission of, or intention to commit, at any place out of British India near willage, any act which, if committed in British India, would be an offence punishunder any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460;

(f) any matter likely to affect the maintenance of order or the prevention of crime the safety of person or property, respecting which the District Magistrate, by general social order made with the previous sanction of the Local Government, has directed to communicate information.—Crim. Pro. Code (A& X. of 1882), s. 45 (as amended BHI, of 1894, s. 1, and A& X. of 1894, s. 2 (3).

**T7. Whoever, being legally bound to furnish information on any subject Presy. Mag. Institution of the subject which he knows or has or and class.

**To any public servant as such, furnishes, as true, or Mag. of 1st information on the subject which he knows or has or and class.

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**To any public servant as such, furnishes, as true, or Ang. or and class.

**To any public servant as such, furnishes, as true, or Ang. or An

Explanation.—In section 176 and in this section the word "offence" indes any act committed at any place out of British India, which, if combid in British India, would be punishable under any of the following section, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 449, 450, 457, 458, 459, and 460; and the word "offender" includes any

Illustrations.

won who is alleged to have been guilty of any such act.*

(c) A a landholder, knowing of the commission of a murder within the limit of his me, wilfully misinforms the Magistrate of the district that the death has occurred by the time to consequence of the bite of a snake. A is guilty of the offence defined in this

(b) A, a village-watchman, knowing that a considerable body of strangers has passed that his village in order to commit a dacoity in the house of Z, a wealthy merchant ling in a neighbouring place, and being bound, under clause 5, section 7, Regulation 1821, of the Bengal Code,† to give early and punctual information of the above fact the officer of the nearest police-station, wilfully misinforms the police-officer that a by of suspicious characters passed through the village with a view to commit dacoity a certain distant place in a different direction. Here A is guilty of the offence defined this section.

Rulings.

In this section the word "offence" has the same meaning when the thing punishing under the special or local law is punishable under such law with imprisonment for a mof six months or upwards, whether with or without fine.—S. 40, Penal Code.

To sustain a conviction under s. 177 it is not necessary to prove a fraudulent intenm. It is quite sufficient if it is shown (1) that the accused was legally bound to furnish brination, and (2) that he furnished as true what he either knew or believed to be false.
Weir, pp. 48-50.

VILLAGE-OFFICERS in Madras are not legally bound to furnish information on every Mer connected with their duties.—Weir, p. 49.

ONE Yesu gave accused four annas to purchase a stamp for him (Yesu). The ac-

† Repealed by Act XVII. of 1862.

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[P. C. 19.]

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^{*} This explanation has been added by Act III. of 1894, s. 5.

his own name. Held that this amounted to the offence of giving false informations. 173, and not to the offence of cheating by personation.—Reg. v. Raghoji sin Kar 3 Bom. H. C. R. 42. [Couch, C.J., and Newton, J. Mar. 6, 1867.]

S. 177 of the Penal Code does not apply to the case of any person who is exa by a police-officer making a false statement, but to cases where, by law, landholders are lage-watchmen are bound to give information, and to other analogous cases of the description.—QUEEN v. LUCKHEE SINGH, 12 W. R. 23. [Jackson and Mitter, J]. July 1869.]

An omission to give information that a crime has been committed does not, u s. 107 of the Penal Code, amount to abetment, unless such omission involves a breach a legal obligation. A private individual is not bound by any law to give information any offence which he has seen committed.—Queen v. Khadim Sheikh, 4 B. L. R. A.C. 7. [Loch and Glover, JJ. Nov. 23, 1869.] But see s. 44 of the Criminal Procedure Col (Act X. of 1882), supra, p. 136.

CERTAIN vaccinators were charged with furnishing false returns to their official The Magistrate found as a fact that the returns furnished were false, but activity the defendants on the ground that they were not "legally bound" to furnish informati within the meaning of s. 177 of the Penal Code. Held that s. 177 embraces every in which a subordinate may seek to impose false information upon his superior. defendants in the present case were public servants, and part of the duties which f undertook was to make true returns to their official superior. To make false returns wa therefore an offence.—Pro., Dec. 21, 1871, 6 Mad. H. C. R., Ap., 48.

UNDER Act V. of 1861, a police-officer is bound to communicate information to be superior officer regarding the commission of a riot affecting the public peace, and to a an entry thereof in the diary which he is required by s. 44 of that Act to keep, and omission to give such information brings him within the purview of s. 177 of the Pe Code.—In the Matter of Syed Futter Mahomed, 21 W. R. 30. [Kemp and Glorus, I Jan. 17, 1874.]

To make a false entry in a diary kept by a Government servant, and sent to his ell cial superior in pursuance of a departmental order, is an offence within the meaning of s. 177 of the Penal Code.—VIRASAMI MUDALI v. REG., I. L. R., 4 Mad. 144. [Kimbersle and Muttusami Ayyar, JJ. Sep. 9, 1881.]

A PERSON attempted to obtain his recruitment in the police of a district by giving or tain information which he knew to be false to the District Superintendent of Police. Italy that such person had not thereby committed an offence punishable under s. 177 or a 1 of the Penal Code, or the offence of attempting to "cheat," within the meaning of s. 41 of that Code.—Empress v Dwarka Prasad, I. L. R., 6 All. 97. [Tyrrell, J. Sep. 25, 1883

THE information which, under the second branch of s. 177 of the Penal Code, a pe son is legally bound to give "for the purpose of preventing the commission of the offence relates not to the commission of offences generally, but to the commission of some ticular offence. P, a constable, was employed to make his rounds by night, and call the houses of the notorious bad characters on his beat who were under police-supervision On one occasion, having made and to ascertain whether they were indoors or not. rounds, he falsely stated to his superior officer as to some of these people that they be been inside their houses, when, as a matter of fact, they had not. Upon these facts th Deputy Magistrate was of opinion that "the information which the accused was require to give, and which he falsely furnished, was information required for the purpose of preventing the commission of an offence, and therefore the offence made out fell under the second part of s. 177 of the Penal Code." He accordingly sentenced the accused to I rigorously imprisoned for six months. On appeal the Sessions Judge declined to inte fere. An application was, therefore, made to the High Court on behalf of the accused, at a rule obtained. The judgment of the Court (Wilson and Tottenham, JJ.) was as follows Wilson, J.—The accused in this case was charged and convicted under s. 177 of the Peal Code. This section contains two branches. The first branch of it runs thus: "Who ever, being legally bound to furnish information on any subject to any public servant a such, furnishes, as true, information on the subject which he knows or has reason to be lieve to be false, shall be punished with simple imprisonment for a term which me extend to six months, or with fine which may extend to one thousand rupees, or with both." This deals with the simple case of a person who, being bound to furnish true in formation to a public servant, furnishes false information to him, and, under this part of the section, the maximum punishment is six months' simple imprisonment with or with

The second branch of the section is expressed thus: " Or if the information ch he is legally bound to give respects the commission of an offence, or is required for purpose of preventing the commission of an offence, or in order to the apprehension in offender. With imprisonment of either description for a term which may extend to byears, or with fine, or with both." The facts found against the accused were these. was a constable, and was employed on what is described as round duties—that is to it was his duty to make his rounds by night, and to call at the houses of the notorious characters on his beat who were under police-supervision, and to ascertain whether were indoors or not. And on one occasion, having made his rounds, he falsely stated, some of these people, that they had been inside their houses, when, as a matter of they had not. Now, that was information which he was bound to furnish to a public ant, that is to say, to his superiors, and it is found that he wilfully made a false statet; therefore his offence comes under the first part of the section. But he has been rected under the second part of it on the ground that the information was required the purpose of preventing the commission of an offence. I think that must mean, the purpose of preventing the commission of offences generally, or rendering the hission of them more difficult, but for the purpose of preventing the commission of particular offence. That being so, the case does not come within the second part hat section. It follows, therefore, that the sentence which was passed was one which ht not to have been passed. The prisoner was sentenced to six months' rigorous imcoment, whereas the maximum punishment to which he could have been sentenced six months' simple imprisonment. It appears that he has already undergone three mths' rigorous imprisonment, which he ought not to have been subjected to; and therethe justice of the case requires that the three months' rigorous imprisonment which undergone should be taken as equivalent to the term of simple imprisonment to ich alone he could have been legally sentenced. He will, therefore, now be released mimprisonment, the sentence of six months' rigorous imprisonment which was passed him being reduced to one of simple imprisonment from the date of the conviction the present date —In the Matter of the Petition of Panatulla: Panatulla v. EMPRESS, I. L. R., 15 Cal. 586. [Wilson and Tottenham, JJ. Dec. 21, 1887.]

178. Whoever refuses to bind himself by an oath "or affirmation" to state Court in the truth, when required so to bind himself by a public which offence servant legally competent to require that he shall so subject to Refusing oath when duly red to take oath by a e servant. bind himself, shall be punished with simple imprison- provisions of mt for a term which may extend to six months, or with fine which may extend ch. 35; or (if not committed one thousand rupees, or with both.

WHEN any such offence as is described in s. 175, 178, 179, 180, or 228 of the Indian or Mag. of 1st all Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, or 2nd class. Court may cause the offender, whether he is a European British subject or not, to be Uncog. tained in custody; and at any time before the rising of the Court on the same day may, if Summons. thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding Bailable. handred rupees, and in default of payment, to simple imprisonment for a term which sanction.

Nothing in s. 443 or 444 shall sanction. edeemed to apply to proceedings under this section.—Crim. Pro. Code (ACt X. of) 1882,

Under s. 8 of the Oaths Act (X. of 1873), if any party to, or witness in, any judicial seeeding offers to give evidence on oath or solemn affirmation in any form common ongst, or held binding by, persons of the race or persuasion to which he belongs, and t repugnant to justice or decency, and not purporting to affect any third person, the best may, if it thinks fit, notwithstanding anything contained in the Oaths Act, tender ch seth or affirmation to him. Under s. 12 of the Oaths Act (X. of 1873), if the party vitaess refuses to make the oath or solemn affirmation referred to in s. 8 of the said A, he shall not be compelled to make it, but the Court shall record, as part of the pro-paliegs, the nature of the oath or affirmation proposed, the facts that he was asked whea he would make it, and that he refused it, together with any reason which he may **ign for h**is refusal.

^{*}The words quoted have been inserted by the Oaths Act (X. of 1873), s. 15.

SECS. 179, 180.] CONTEMPTS OF LAWFUL AUTHORITY, &c. [CHAR.X.

Court n
which offence
committed,
subject to
provisions of
ch. 35; or (if
not committed in Court)
Presy. Mag.
or Mag. of 1st
or 2nd class.
Uncog.
Summons.
Bailable.
Not comp.
Sanction.

Refusing to answer a public servant, refuses to answer any question demanded of him touching that subject by such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupeus or with both.

When any such offence as is described in s. 175, 178, 179, 180, or 228 of the Indianal Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody, and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid. Nothing in s. 443 cm 444 shall be deemed to apply to proceedings under this section.—Crim. Pro. Code (ACLX—of 1882), s. 440.

UNDERS. 165 of the Evidence Act (I. of 1872), a Judge has the power of asking intelevant questions to a witness, if he does so in order to obtain proof of relevant facts; beat if he asks questions with a view to criminal proceedings being taken against the witness, she witness is not bound to answer them, and cannot be punished for not answering them witness is 179 of the Penal Code.—Quern-Empress v. Hari Lakshman, I. L. R., 10 Bom. 185. [Nanabhai Haridas and Wedderburn, JJ. Oct. 14, 1885.]

A COMPLAINT was filed by Ganesh Náráyan Sáthe, in the Court of the District Magistrate of Poona, against Bálkrishna Govind Sindekar and five other mámlatdárs, charging them with purchasing judicial offices through the instrumentality of one Hanmastrae aghirdar, who was alleged to have had influence with Mr. A. T. Crawford, Revenue Cos missioner, C. D. It was held that, as a general rule, any person having knowledge of the commission of an offence may set the law in motion by a complaint, even though he is not The exceptions to this rule, of which personally interested or affected by the offence. ss. 195 and 198 of the Criminal Procedure Code are examples, are exceptions created by There is nothing in the Code showing an intention to confine prosecutions to the persons directly injured. Where the offence charged is a "warrant" and not a "summons" case, a Magistrate ought to proceed with the inquiry or trial in spite of the with drawal of the complainant, if he finds the elements of an offence on the facts set forth in the complaint. S. 248 of the Code of Criminal Procedure applies only to a "summons" Semble.—A complainant is not a witness punishable for refusal to answer under s ASC of the Code of Criminal Procedure, or under 8, 179 of the Penal Code.—In re Ganesh NARAYAN SATHE, I. L. R., 13 Bom. 600. [Scott and Jardine, J]. June 19, 1889.]

10 V

Ditto.

180. Whoever refuses to sign any statement made by him, when require Refusing to sign statement.

ed to sign that statement by a public servant legally competent to require that he shall sign that statement shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or both.

WHERE, in the course of a revenue-inquiry, the accused made a deposition, bur refused to sign it, it was held that such refusal did not constitute an offence punishable under s. 180.—Mad. H. C. Rulings, Jan. 18, 1870.

An accused person who refuses to sign a statement made at his trial in answer to questions put by the Court commits no offence punishable under s. 180 of the Pens Code.—IMPERATRIX v. SIRSAPA, I. L. R., 4 Bom. 15. [Westropp, C.]. Aug. 5, 1877.]

When any such offence as is described in s. 175, 178, 179, 180, or 228. Penal Code is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.—Crim. Pro. Code (Act X. of 1882), s. 480.

h the Court in any case considers that a person accused of any of the offences referto in s. 480 (of Act X. of 1882), and committed in its view or presence, should be imwaed otherwise than in default of payment of fine, or that a fine exceeding two flundreposes should be imposed upon him, or such Court is, for any other reason, of opinion ht the case should not be disposed of under s. 480 (of Act X. of 1882), such Court, after ardies the facts constituting the offence, and the statement of the accused as hereinhere provided, may forward the case to a Magistrate having jurisdiction to try the same, al may require security to be given for the appearance of such accused person before such lagistrate, or, if sufficient security is not given, shall forward such person under custoto such Magistrate. The Magistrate to whom any case is forwarded under this section all proceed to hear the complaint against the accused person in the manner hereinbeprovided Crim. Pro. Code (Act X. of 1882), s. 482.

A MERE refusal to sign a receipt for a summons is not a offence under s. 173 or s. 180 the Penal Code.—Queen Empress v. Krishna Gobinda Das, I. L. B., 20 Cal. 358. figot and Rampini, JJ. Aug. 25, 1892.]

False statement on oath to blic servant or person au-prized to administer an

181. Whoever, being legally bound by an oath " or affirmation "* to state Ct. of Ses., the truth on any subject to any public servant or other Presy. Mag., person authorized by law to administer such oath "or Mag. of person authorized by law to administer such oath "or ist class. affirmation,"* makes to such public servant or other Uncog. person as aforesaid, touching that subject, any state-Bailable.

Bailable.

Not comp.

at believe to be true, shall be punished with imprisonment of either description Sanction. k a term which may extend to three years, and shall also be liable to fine. S. 181 applies to cases in which the proceedings are not of a judicial character, such proceedings before a Commissioner of Income-tax. A person is not legally bound to the truth where the officer who administers the oath is trying a case wholly beyond jurisdiction—In re Andy Chetty, 2 Mad. H. C. R. 408 [France and January 17]

In the state of th The making of a false return of service of summons is an offence punishable, not un-

rs. 181, but under s. 193, of the Penal Code, and is cognizable by the Court of Session boe.—Queen v. Shama Churn Roy, 8 W. R. 27. [Jackson and Hobhouse, JJ. June 1827.] But see 4 Mad. H. C. R., Ap , 18, infra.

A CONVICTION under s. 181, Penal Code, is good, though the offence falls within s. 193. let a sentence under s. 181, which awards no term of imprisonment, is illegal.—PRO., lov. 14, 1868, 4 Mad. H. C. R., Ap., 18. But see Queen v. Shama Churn Roy, 8 W. R. 27, supra.

WHERE a false statement is made in a stage of a judicial proceeding before a Magisrate, he ought not to convict under s. 181, but commit to the Sessions under s. 193. powiction under s. 181 for making a false statement in a stage of a judicial proceeding as held to be illegal.—QUEEN v. NUSSUROODDEEN SHAZWAL, 11 W. R. 24. [Norman and ackson, []. Mar. 25, 1860.]

WHEN an offence under s. 103 of the Penal Code is established, a conviction under 181 is illegal. When the accused made, on solemn affirmation a statement before an Income-tax Commissioner, which statement the accused knew, or had reason to believe, be incorrect, it was held that such statement amounted to the offence of giving false widence in a judicial proceeding under s. 193 of the Penal Code, and was, therefore, not be by a Full-power Magistrate, as it could not be treated as constituting an office triable under s. 181 of the Penal Code (making a false statement to a public sertant).—Reg. v. Dayalji Endarji, 8 Bom. H. C. R. 21. [Lloyd and Kemball, J]. April

S.51, ch. 6 of Act I. of 1879, enacts that, "subject to such rules as may be made by the Governor-General in Council as to the evidence which the Collector may require, albrance shall be made by the Collector for impressed stamps spoiled in the cases hereinmentioned," &c. According to a rule made with reference to that section, "the Collector may require every person claiming a refund under ch. 6 of the said Act, or his buly suthorized agent, to make an oral deposition on oath," &c. Held, therefore, that the

193 inchede 181

^{*} The words quoted have been inserted by the Oaths Act (X. of 1873), s. 15.

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Collector himself is the officer, and no other, to whom power is given by law to make is quiries into applications for allowances for spoiled stamps, to take evidence on oath is a ference thereto, and to grant or refuse such applications, and he cannot delegate his authority in the matter. Held, therefore, where a person had applied for a refund under chaof Act I. of 1879, and the Collector made over the application for inquiry to a Deput Collector, that the Deputy Collector was not entitled to put the witnesses produced by applicant on their oaths, and consequently, in reference to the statements of such witnesses no charge under s. 181 or s. 193 of the Penal Code was sustainable.—Empress a Material Code was sustainable.

CHAP. X

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Information as an offence, not against the individual charged, but against the public servant to whom the false information was given. To constitute an offence under s. 182, Penal Code, the information given must be information which the informer knew or believed to be false, and it must be proved that he gave it with such knowledge. Thus, where A, out of malice to B, gives C, a public servant, false information intended to sigure B, B cannot prosecute A criminally under s. 182 without C's consent.—REVISION DF PROCEEDINGS IN THE CASE OF MOULTY ABBOOL LUTEEF, 9 W. R. 31; 5 Wym. 37. [Loch and Hobhouse, J]. Mar. 10, 1868.] See Queen v. Hurree Ram, 3 N.-W. P. 194, infra.

WHERE a Deputy Magistrate instituted proceedings against a complainant and his witnesses for preterring a false charge of theft before him, it was held that he could not merely rely on he decision in the theft-case, but was bound to prove the falsity of the complaint of theft in the presence of the accused—QUEEN v. RAM DASS BOISTUB, II W. R. 35. [Jackson and Markby, J]. April 6, 1869.]

STATEMENTS made by a prisoner for the purposes of his defence cannot be held to be information given to a public servant" within tha meaning of s. 182 of the Penal Code.—QUEEN v. DARIA KHAN, 2 N.-W. P. 128. [Turner, Offg. C. J., and Spankie, J. April 2, 1870.

IN a case in which a false charge was brought, a Magistrate gave the accused, A, pernission under s. 195, Code of Criminal Procedure, 1882, to prosecute the complain nant, B, of an offence under s. 211, Penal Code. The Magistrate tried the complaint of A as a complaint under s. 211, but he subsequently framed a charge against B under s. 182, Penal Code, and punished him under that section. Held with reference to s. 195, Code of Criminal Procedure, 1882, that the offences under ss. 182 and 211, Penal Code, being affences under ch. 14 of the Code of Criminal Procedure, 1882, the Magistrate was wrong in framing the charge under s. 182 without obtaining the previous sanction of the Criminal Court which heard the previous complaint of B.—RAJ KUMAR v. KIRTI OJHA, 13 W. R. 67; 7 B. L. R. 29. [Loch and Hobhouse, JJ. April 30, 1870.]

UNDER the above section the gist of the offence consists in the offender's intention in riving the false information. The offence is the contempt of the lawful authority of the public servant by moving him to use his authority wrongfully. It is against the public servant that it is committed, and it is complete directly the false information is given irrespectively of the results which may actually follow the action that may be taken upon it. The specific injury that may result to the person in respect of whom the information is given is a distinct matter. And so it was held that no ground for a complaint of giving alse information to a public servant under this section exists on the part of any one but the public servant against whom the offence was committed.—Queen v. Hurree Ram, N.-W. P. 194. [Turnbull, J. July 29, 1871.] See In e Moulvy Abdool Luteef, 9 W. R. 31, supra.

WHERE a person was accused under s. 182 of the Penal Code with having given false aformation to a head-constable, it was held that the provisions of s. 168 of the Code of Criminal Procedure had been sufficiently complied with, inasmuch as the Lower Appellate Court stated in its judgment that "the case had been forwarded under s. 182 by the officer a charge of the District Superintendent's office"—the District Superintendent being the official superior of the head constable.—Queen v. Grish Chunder Sircar, 19 W. R. 33. Glover and Mitter, JJ. Feb. 17, 1873.] Follows Queen v. Ramgolam Sirgh, 11 W. R. 22. But see the requirements of the corresponding section of the present law (s. 195 of the Code of Criminal Procedure, 1882), infra, p. 148.

A DEPUTY Magistrate has no power to question an order made by his superior, sanctioning a prosecution under ss. 182 and 211 of the Penal Code. Whether such sanction has been rightly or wrongly given is a question for the accused to raise before a competent Court.—Empress v. IRAD ALLY, I. L. R., 4 Cal. 869; 4 C. L. R. 413. [Ainslie and Broughton, J]. April 3, 1879.]

An offence under s. 211 of the Penal Code includes an offence under s. 182; it is therefore open to a Magistrate to proceed under either section, although, in cases of a more serious nature, it may be that the proper course is to proceed under s. 211.—BHOOKTEAM v. HEERA KOLITA, I. L. R., 5 Cal. 184. [Ainslie and Broughton, J]. April 26, 1879.]

WHERE a person has instituted a charge found to be false by the police, a Magistrate, except under exceptional circumstances, is not justified, merely on a perusal of a police-report, Thich has found a charge made to be false, in prosecuting the person by whom such charge was preferred, summarily under s. 182 of the Penal Code, but should proceed under s. 211. When a charge is pronounced false by the police, no proceedings should

Note Ki 5.182 of Contempor be taken by a Magistrate suo motu, until & reasonable interval has shown that the plainant accepts the results of the investigation.—In the Matter of Russick Lall Met. Lick, 7 C. L. R. 382. [Garth, C.J., and Maclean, J. Nov. 17, 1889.]

S. 182 does not apply where the public servant misinformed is only competent in (and passes on) the information, and the power to be exercised by him cannot tend direct or immediate prejudice of the person against whom the information is Queen v. Periannan and Queen v. Naraina, I. L. R., 4 Mad. 241. The following water report of these two cases: "The facts in these cases, which were referred by the D Magistrate of Salem for the orders of the High Court, on the ground that the proce therein were illegal, are sufficiently set out, for the purpose of this report, in the jud of the Court (Innes and Muttusami Ayyar, JJ). Judgment: The material facts in this case are as follow: Complaint was made to the Village-Magistrate that certain persons were beaten, and that jewels, exceeding Rs. 10 in value, were taken from the pe beaten. The Village-Magistrate reported the matter at the police-station, and the station officer, after inquiry, referred the cases as false to the Sub-Magistrate of Vaniyambadi. In doing so he asked for sanction to prosecute the complainants under s. 182 (giving false isformation to a public servant with intent to cause him to use his lawful power to the injury of another person). The Sub-Magistrate accorded sanction, and subsequently ha tried, convicted, and punished the accused for an offence under s. 182. The District Magistrate submits that the proceedings are illegal, on the grounds (1) that the Village-Magistrate to whom the information was given had no power in the case; (2) that the Sammagistrate had no power to give sanction, as he was not the public servant to whom the information was given. We are unable to concur in the opinion of the District Magistrale. Two questions appear to us to arise on the case: 1st, is s. 182 applicable to the circumstances? and, and, was anything further required than what was done to render the prosecution legal? We think the words 'to use his lawful power' in s. 182 refer to power to be exercised by the officer misinformed, which shall tend to some direct and h mediate prejudice of the person against whom the information is levelled. They do set, we think, apply to such prejudice as might eventually arise in consequence of certain has Jess intermediate steps to be taken by the misinformed officer, such as were taken in the present case, where all that the misinformed officer did or could do was to pass on their formation. As to the other question, we think all was done that was necessary. The public servant himself complained, which is sufficient to satisfy the requirements of the section (40%) Criminal Procedure Code, corresponding with s. 195, Act X. of 1882); and if it were well so, the Village-Magistrate may be said to be subordinate to the Second-class Magistrate, and the sanction of the Second-class Magistrate would be sufficient. We shall not these foreinterfere."—Queen v. Periannan and Queen v. Naraina, I. L. R., 4 Mad. 241. [Inner and Muttusami Ayyar, JJ. Nov. 14 18, 1881.]

M FALSELY informed the Collector of a district that certain zemindars had userped possession of certain land belonging to Government, with the intent "to give trouble to such zemindars, and waste the time of the public authorities." Held that inasmuch as such information was no more than an expression of a private person's belief that the Collector might, if he chose, sustain a civil suit with success against such zemindars, and as, had the Collector agreed with the informant, the result would not have been that he would have used his lawful power as a Collector or as a Magistrate to the injury or annoyance of such zemindars, or that he would have done anything he ought not to have done, Mad not committed an offence under s. 182 of the Penal Code.—Empress v. Madho, I. L. R., 4 All. 498. [Tyrrell, J. June 21, 1882.]

K MADE a report at a police-station accusing R of a certain offence. The police having reported to the Magistrate having jurisdiction in the matter that, in their opinion, the offence was not established, the Magistrate ordered the case to be "shelved." Kethen preferred a complaint to the Magistrate, again accusing R of the offence. The Magistrate rejected the complaint with reference to the police-report. Subsequently R, with the sametion of the police-authorities, instituted criminnal procedings against K, under s. 182 of the Penal Code, in respect of the report which he had made at the police-station, and K was convicted under that section. Held that before proceeding against K the Magistrate should have fully investigated and sifted his complaint for himself, and should not have abrogated the functions imposed on him by law because the police had reported against the entertainment of the case. The views expressed in Govt. v. Karimdad (t. L. B. 6 Cal. 496) concurred in. Held, also, that K's conviction under s. 182 of the Penal Code was illegal, as the Magistrate had no power to entertain a complaint under that section

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t the instance of R, the application of s. 182 and the institution of prosecutions under being limited to the public servant against whom the offence has been committed or to is official superior as mentioned in s. 467 of Act X. of 1872 (or s. 195 of Act X. of 1882), and it not being intended that those provisions should be enforced at the instance of printe persons. Moreover, if K's complaint was false, his offence was against R, and not plant the public servant to whom the complaint was made, and fell within s. 217 of the local Code. Ordered that the complaint made by K should be investigated.—EMPRESS LADBA ALSHAN, I.,L. R., 5 All. 36. [Straight, J. July 5, 1882.] Overruled by Empress Lynga Kishore, I. L. R., 8 All. 382, infra, last para. Dissented from in Poonit Singh v. India Blot, I. L. R., 13 Cal. 270, infra, p. 146.

WHERE a person specifically complains that another man has committed an offence, ad does so falsely with the object of causing injury to that person, he is guilty of making falsecharge of an offence under s. 211 of the Penal Code, and not under s. 182.—EMPRESS ARJUN, I. L. R., 7 Bom. 184. [West and Pinhey, JJ. Nov. 2, 1882.]

COMPLAINED to the police that she had been raped by R. The police having sported the charge to be false, criminal proceedings were instituted against her under 182 of the Penal Code. In the meantime, J made a complaint in Court, again charging with rape. This complaint was not disposed of, but the proceedings against her, under 182 of the Penal Code, were continued, and she was eventually convicted under that extion. Held (setting aside the conviction, and directing that J's complaint should be sposed of), that such complaint should have been disposed of before proceedings were like against her under s. 182.—Empress v. Jumni, I. L. R., 5 All. 387. [Oldfield, J. lar. 9, 1883.]

THE accused was charged, in the alternative, by the trying Magistrate, as follows: I. W. W. Drew, Magistrate, first class, hereby charge you Ramji Sajabarao, as fol-That you, on or about the 13th day of October 1882, at Nandarpada, stated that had seen Vishnu Vaman and Mahadu Lakshman carrying teak-wood from Golfe farest to Narayan Ramchandra, range-forest officer, and on 14th February 1885 you stated math before the First-class Magistrate at Pen, at the trial of these persons, that you did as where they had brought the wood from, and thereby committed an offence punished under s. 182 or s. 193 of the Penal Code (AC XLV. of 1860), and within my cogniance; and I hereby direct that you, Ramji Sajabarao, be tried by the said Court on the At the trial the accused asserted the truth of the former of these two Interneats, and denied having made the oiher. The Magistrate was unable to find which them was false, and convicted the accused, in the alternative, either under s. 182 or 193 of the Penal Code (Act XLV. of 1860). Held that the charge was bad in law, being m alternative charge in a form forbidden by s. 233 of the Criminal Procedure Code (Act of 1882), which directs that, for every distinct offence of which any person is charged. here shall be a separate charge. Nor could the accused be tried upon a charge framed the alternative as in the form given in Sch.V.-XXVIII. (4) of the Criminal Procedure Lode (Act X. of 1882). For, upon the facts alleged, there, was no way of charging him with one distinct offence on the ground of self-contradiction. He could not successfully be charged, under s. 193 of the Penal Code (Act XLV. of 1860), on contradictory statements, because he only made one deposition, in which there were no discrepancies; and, similarly, he could not be charged under s. 182 of the Penal Code, for he only once gave information to a public servant. *Held*, also, that, having regard to ss. 225, 232, and 537 of the Criminal Procedure Code (Act X. of 1882), the accused, convicted upon such a charge, must be held to have been misled in his defence, and his conviction and sentence reversed. In charges founded upon supposed contradictory statements, every presumption in favour of the possible reconciliation of the statements must be made. Under 1.172 of the Forest Act (VII. of 1878), a forest-officer is a public servant within the meaning of the Penal Code (Act XLV. of 1860). Any information given to him with the inintensationed in s. 182 of the Penal Code is punishable under that section, whether that **bicimation** is volunteered by the informant, or is given in answer to questions put to him by that officer.—Queen-Empress v. Ramji Sajabarao, I. L. R., 10 Bom 124. [Nanabhai Maridas and Wedderburn, JJ. Sep. 7, 1885.]

A PROSECUTION under s. 182 of the Penal Code may be instituted by a private person, provided that he first obtains the sanction of the public officer to whom the false information was given, or of his official superior. Queen v. Radha Kishan (I. L. R., 5 All. 36) seamed. Where a specific false charge is made, the proper section for proceedings to

[P. C. 20.1

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be adopted under is s. 211 of the Penal Code.—QUEEN-EMPRESS v. JUGAL KISHOR, L. R., 8 All. 382. [Straight, Offg. C.]. May 28, 1886.]

An information was given to a police officer in the course of which two persons was named in whose houses stolen property belonging to a certain individual would be distributed. On complaint the information was found to be false, and the accused was coursed and punished for two offences under s. 182 as affecting two different persons, that, although the information related to two different persons, the accused course charged with having made only one false statement, and punished for one offence was s. 182. S. 195, Criminal Procedure Code, clearly shows that a complaint directly was by a public servant mentioned therein is quite as sufficient as his sanction. Embraced in the course of the complaint directly was by a public servant mentioned therein is quite as sufficient as his sanction. Embraced in the course of the

S. 182 of the Penal Code must be read as an entire section, and, when so read, it a plies to those cases in which the police are induced, upon information supplied to the to do or omit to do something which might affect some third person, and which the would not have done had they known the truth of the matter laid before them. of the case appear in the following judgment, which is reproduced in full: "Pethers C.J.—We think that this rule must be made absolute to set aside the conviction. facts of the case are that a person went on one occasion and informed the police that h had been robbed in the street of a shawl, but in the statement which he made to the solice he did not indicate any particular person or describe any person in such a way as by me possibility could be supposed to implicate any one as the person who committed the to bery. All he said was that he was robbed by a person whom he did not see. So that in the statement that he made he did not say anything to cast suspicion on any one in pur-Under these circumstances, there was no offence within the meaning of s. Ita the Penal Code. That section provides that, if any person gives any information to a public servant with the intention of inducing him to put his powers in force to the injury or annoyance of any person, or to do or omit anything which such public servant would not have done or omitted to do if the true state of facts respecting which such i emation was given had been known to him, he shall be punished in a certain way the specified. As it seems to us, that section must be read as a whole, and, taken as a whol we think it applies to those cases in which the police are induced, upon the information supplied to them, to do or omit to do something which might affect some third person, and which they would not have done if they had known the true state of things. the information which was given to these police-constables, all that they could be justified in doing was to examine the informant as to what had happened to him, and then make such inquiries as the result of that examination might render desirable; but they would have no right to interfere with any one, or search any one's house, because there were no circumstances brought to their knowledge by the information which this man gave which entitled them to suppose that any particular individual was guilty of any offence. Under the circumstances, the most that the statement of the accused amounts to is that it was untrue, and was made for the purpose of hoaxing the police. No doubt, that is a very wrong thing for any man to do. In the first place, it is wrong to tell lies, and in the se cond place it is extremely wrong to take up the time of Government servants by putting them to useless inquiries under circumstances of this kind; but I do not think myself that such conduct comes within the meaning of this section, or amounts to anything more than a hoax, for which no punishment is provided by the Code. Under these circumstances, we cannot make a crime when it is not made one by the Code, or provide a punishment for it. The rule will therefore be made absolute to set aside the conviction; the prisoner will be discharged.—In the Matter of the Petition of Golam Ahmed Kazi, I. L. R. 14 Cal. 314. [Petheram, C.J., and Beverley, J. Feb. 19, 1887.]

UNDER s. 182 of the Penal Code the giving of false information to a public servant is penal, when either of two consequences is intended to be caused, or is known to be likely to be caused, by the false information, the first being the causing the public servant "to use the lawful power of such public servant to the injury or annoyance of any person; the second being the causing the public servant "to do or omit anything which such public servant ought not to do or omit, if the true state of facts respecting which such information is given were known to him." To constitute an offence under the latter part of the section, it is not necessary to show that the act done would be to the injury or annoyance of any third person. A personated B at an examination, called the Vernacular Sixth Standard Examination. A passed the examination, and obtained a certificate from

the succional authorities in B's name. B thereupon applied to the Assistant Collector to have his name entered in the list of candidates for service in the Revenue Department. He attached to this application the certificate issued in his name, as it was a rule of Government that only those who had passed the Sixth Standard Examination were eligible for employment in the Revenue Department. On receipt of this application the Assistant Collector ordered B's name to be entered on the list of candidates. Held that B was milty of the offence of giving false information to a public servant within the meaning of the faller part of s. 182 of the Penal Code.—Queen-Empress v. Ganesh Khanderad and Ganesh Daulat, I. L. R., 13 Bom. 506. [Jardine and Candy, JJ. Jan. 29, 1889.]

Procedure Code, it is incumbent on them so to frame the proceedings before them as to mable the High Court to satisfy itself from the record whether the application for sanction has been properly granted or not. A Magistrate, in disposing of a charge of theft, belivered the following judgment: "The charge of theft of doors and windows is not proved at all against the accused. They are acquitted." There was no further record of he proceedings. Immediately on the judgment being delivered, the pleader appearing for he accused applied for sanction to prosecute the complainant under ss. 182 and 211 of the Penal Code. The Magistrate refused to hear the application then, on the ground that was not the proper time fixed by him to hear applications. The attorney for the complainant, who had expressed his willingness to have the application heard and disposed of there and then, intimated that he was prepared to show cause why sanction should not be granted, and asked that notice of any future application might be given to the complainant. The accused renewed the application the following day without notice to, and in the absence of, the complainant or his attorney, and the Magistrate granted the sanction asked for. On an application to the High Court to revoke the sanction, held that the Magistrate did not exercise a proper discretion under the circumstances in neglecting to give the complainant notice of the application, and an opportunity of being heard. Held, arther, that the mere fact of the charge laid by the complainant not having been proved was not in itself sufficient ground for granting sanction to prosecute him under ss. 182 and 211' of the Penal Code, and as, beyond the judgment of the Magistrate, there was nothing on the record to show that there were sufficient grounds for granting the sanction t should be revoked .- KEDAR NATH DAS v. MOHESH CHUNDER CHUCKERBUTTY, I. L. R., 16 Cal. 661. [Prinsep and Hill, J]. May 13, 1889.]

IN a petition of appeal from a conviction, the appellant falsely stated that the convicting Magistrate declined to summon his witnesses. The Magistrate to whom the appeal was preferred called upon the appellant to verify the allegations in the petition of appeal on solemn affirmation, and he did so. Held that the appellant had not committed an offence under s. 181 or 182 of the Penal Code.—Queen-Empress v. Subbayya, I. L. R., 12 Mad. 451. [Collins, C.J., and Parker, J. July 11, 17, 1889.]

In order to constitute the offence defined in s. 182 of the Penal Code, it is not necessary that the public servant to whom false information is given should be induced to do anything, or to omit to do anything, in consequence of such information. The gist of the offence is not what action may or may not be taken by the public servant to whom false mormation is given; but the intention or knowledge (to be inferred from his conduct) of the person supplying such information. In the Matter of Golam Ahmed Kasi (I. L. R., 14 Cal. 314) dissented from.—Queen-Empress v. Budh Sen, I. L. R., 13 All. 351. [Edge, C.], and Straight, J. April 4, 1891.]

Where a Deputy Commissioner issued a sanction to prosecute the accused upon an express application made on behalf of a certain person against whom a charge of torture had been made, and which he found, for reasons stated in his judgment, to be false, held, aking the order to have been one made under s. 195 of the Code of Criminal Procedure, that it was a proper sanction, inasmuch as it was given to a contemplated prosecution by a definite person. Semble, on the supposition that the order was one under s. 476 of the Criminal Procedure Code, that it was not necessary for the validity of an order under that section that there should be any evidence on the record contradicting the case which was thought to be false, or that there should be a preliminary inquiry. Although it may sometimes well be that a preliminary inquiry ought to be held, the adoption of a rigid rule to that effect is neither rendered imperative by the law, nor is it desirable. In the Matter of Multy Lall Ghose (I. L. R., 6 Cal. 308), The Queen v. Baijoo Lall (I. L. R, 1 Cal. 450), and Khepu Nath Sikdar v. Girish Chunder Mukerjee (I. L. R., 16 Cal. 370), referred to and

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distinguished.—BAPERAM SURMA v. GOURI NATH DUTT, I. L. R., 20 Cal. 474. [Figota and Hill, J]. Nov. 2, 1892.]

THE proceeding under s. 195 of the Code of Criminal Procedure, by which an order granting or refusing to grant sanction to prosecute may be set aside, is a proceeding in revision, and not by way of appeal.—MEHDI HASAN v. TOTA RAM, I. L. R., 15 All. 61. [Knox, J. Nov. 19, 1892.]

A Head Assistant Magistrate sanctioned a prosecution under the Criminal Procedure Code, s. 195, on the charge of preferring a false complaint, and forwarded his proceedings to the Deputy Magistrate of another division of the district who ordinarily had no jurisdiction to try offences committed in the division under the Head Assistant Magistrate. Held that the Deputy Magistrate had jurisdiction to try the charge.—Queen-Empress of Nagappa, I. L. R., 16 Mad. 461. [Shephard and Best, JJ. Mar. 28, 1893.]

WHERE, as the result of a police investigation, it appears that a complaint made to the police of the commission of an offence punishable under the Penal Code is false, it is not necessary that the complainant should be given any further opportunity of establishing the truth of his allegations before his prosecution under s. 182 of the Penal Code ordered.—Queen-Empress v. Raghu Tiwari, I. L. R., 15 All. 336. [Edge, C.J., and Aikman, J. May 16, 1893.]

Where one Judge exercising the revisional jurisdiction of the High Court, in reversal of an order of a First-class Magistrate, had granted sanction under the Criminal Procedure Code, s. 195, for a prosecution under the Penal Code, s. 182, an appeal was preferred from his judgment under the Letters Patent, s. 15. Held that no appeal lay, that section of the Letters Patent being inapplicable in cases of criminal jurisdiction.—Sriniyasa Ayyangar D. Queen-Empress, I. I. R., 17 Mad. 105. [Collins, C.J., and Shephard, J. Oct. 5, 1893.]

- (a) of any offence punishable under ss. 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate;
- (b) of any offence punishable under s. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction or on the complaint of such Court, or of some other Court to which such Court is subordinate;
- (c) of any offence described in s. 463, or punishable under s. 471, 475, or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

When sanction is given in respect of any offence referred to in this section; the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and no such sanction shall remain in force for more than six months from the date on which it was given.

For the purposes of this section, every Court, other than a Court of Small Causes shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

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SBC. 183.

188. Whoever offers any resistance to the taking of any property by the Presy. Mag. lawful authority of any public servant, knowing or or Mag. of 1st Resistance to taking of prohaving reason to believe that he is such public Uncog. aty by lawful authority of servant, shall be punished with imprisonment of Summons. ther description for a term which may extend to six months, or with fine Bailable. which may extend to one thousand rupees, or with both.

Sanction.

An officer subordinate to an officer in charge of a police-station, who was deputed by belatter to make an inquiry under s. 135 of the Code of Criminal Procedure, attempted, **Ebout a search-warrant**, to enter a house in search of property alleged to have been stolen, it was obstructed and resisted. Held (applying s. 99 of the Penal Code) that, even length the police-officer was not strictly justified in searching the house without a warrant, eperson obstructing and resisting could not set up the illegality of the officer's proceedas a justification of his obstruction, as it was not shown that that officer was acting crise than in good faith and without malice. A Magistrate acting judicially should a import into the case perore nim his previous knowledge of the character of the accusbut should determine his guilt or innocence upon the evidence given in the case.—Reg. VYAMKATRAV SHRINIVAS, 7 Bom. H. C. R. 50. [Gibbs and Melvill,]]. June 15, 1870.]

Ir a bailiff break the doors of a third person in order to execute a decree against a idgment-debtor, be is a trespasser if it turn out that the person or goods of the debtor are at ia the house, and, under such circumstances, the owner of the house does not, by obacting the bailiff, render himself punishable under s. 183 or s. 186 of the Penal Code. excused was convicted, under s. 183, Penal Code, of obstructing a bailiff, who broke m the doors of the accused (a third party) to execute a decree against a judgment-debtt. The Bombay High Court, in quashing the conviction, made the following observas: "Now, in the present case, there is no evidence whatever that there were any goods the debtor in the house of the accused Gazi; and, in the absence of such evidence, the esimption must be in her favour that there were no such goods. As there was no such experty in the house, Gazi did not offer any resistance to the taking of any property by h hwiri authority of a public servant, which is the offence of which she has been convictfunder s.º183. Nor could she be convicted under what would appear to be a more appromate section, namely, s. 186, for voluntarily obstructing a public servant in the dislarge of his public function; for the bailiff would have been exceeding his functions if had done that which Gazi prevented him from doing."—REG. v. GAZI KOM ABA DORK, Bom. H. C. R. 83. [Gibbs and Melvill, JJ. July 28, 1870.] But see cl. 1 of s. 99 of he Penal Code, which says that "there is no right of private defence against an act done rapublic servant acting in good faith under colour of his office, though that act may m be strictly justifiable by law."

THE pay of G, a servant of a Railway Company, fell due on the 1st April. On the March the Civil Court granted a prohibitory order under Act VIII. of 1859, attachg G's pay, and the order was served on the Auditor of the Company on the 1st April. he Auditor returned the order, having endorsed on it that it was dated March 31st, and Is pay was not due till the 1st April. The order was again served on the 1st April, and Auditor again returned it with the remark that, since the first service, the pay due to had been made over to him. The Auditor was convicted under s. 183 for resisting the thing of property by the lawful authority of a public servant. Held that the conviction wild under s. 183, and could not be sustained under s. 188, as on the 31st March there to debt due to G on which the prohibitory order could operate, and the Auditor ns, therefore, not bound to obey such an order.—LIGHTFOOT v. CROWN, Panj. Rec., No. | of 1874.

A PERSON was convicted under s. 183 of the Penal Code for offering resistance to the tachment of property by a public servant. The offence was committed on the 4th of thrown 1883, but the warrant under which the public servant acted was returnable on Prince the previous day. Held that the conviction was bad.—Anand Lall Bera v. Emad Tottenham, JJ. Aug. 2, 1883.]

A MURR oral statement by a person claiming to be the owner of certain articles atthat by a bailiff in execution of a decree, to the effect that he would not allow the will to take away the articles unless he entered them as his property, does not amount

Sags, 184-186.] CONTEMPTS OF LAWFUL AUTHORIS

to an offence under s. 183 of the Penal Code.—QUEEN-EMPRESS v. HUSA Bom. 564. [Birdwood and Parsons, JJ. Nov. 20, 1890.]

A DISTRICT Judge ordered that the house of the defendant in a suit put him be searched and certain property brought to the Court, and appointed a de to carry out this order. The commissioner went to the house, but the defendances, and would not admit him. A crowd collected, and the commissioner be unsafe to proceed to carry out the order by force, and was unable to dog The defendant was prosecuted, and sentenced under the Penal Code, s. 186.3 the facts disclosed no offence under that section.—QUEEN-EMPRESS v. SOMMAI 15 Mad. 221. [Wilkinson and Subrahmanya Ayyar, J]. Jan. 25, 28, 1892.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailpble. Not comp. Sanction.

Obstructing sale of property offered by the lawful authority of any public server its sale of public server.

by the lawful authority of any public server its sale of property offered for sale by authority of public server.

by the lawful authority of any public server its shall be punished with imprisonment of sale of scription for a term which may extend to five hundred rupees, or with both.

A is charged, under s. 184 of the Indian Penal Code, with intentionally attacking a sale of property offered for sale by the lawful authority of a public servant. Should be in those words.—Crim. Pro. Code (Act X. of 1882), s. 221, illus.

Ditto.

lllegal purchase or bid for property offered for sale by authority of public servant.

capacity to purchase that property at that sale, or bids for such property at t

WHERE the lease of a ferry was put up to auction, and the accused gave it was held that he was rightly convicted under s. 185.—5 Rev., Jud., and Poly p. 38.

A PERSON is guilty of contempt of the lawful authority of a public servant by bidding at an aucti-on-sale held by a Magistrate, and failing to complete Queen v. Reazooddeen, 3 W. R. 33. [Loch and Seton-Karr, J]. June 24,

Ditto.

Obstructing public servant in discharge of public functions.

Obstructing public servant in discharge of public functions shall be punished to improve somment of either description for a term to be extend to three months, or with fine with many contents of the public functions.

ESCAPING from lawful custody is not obstructing a public servant in the his public functions within the meaning of s. 186 of the Penal Code. Escapit ful custody is punishable under s. 224 of the Penal Code.—Reg. v. Poshu bit Patel, 2 Bom. H. C. R. 128. [Couch, C.]., and Newton and Warden, JJ. Ja

Conviction, under s. 186 of the Penal Code, of obstructing a mauzadar charge of his duty reversed, there being nothing to show that the mauzadar servant.—Joynath v. Soorjaram, 8 W. R. 66. [Jackson and Hobhouse, JJ. S.

Conviction and sentence under s. 186 of the Penal Code reversed, as of the accused—refusing to accompany a measuring-clerk employed under to 1865 to his (the accused's) house, and permit it to be measured—did not confience of obstructing a public servant in discharging his public functions. Whether s. 11 of Bom. Act I. of 1865 justifies surveyors in entering private the purpose of measuring them.—Reg. v. Bhagtidas, 5 Bom. H. C. R. 51, and Tucker, JJ. July 1, 1868.

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A MOFUSSIL Small Cause Court has no jurisdiction to punish for resistance of a pross which it has issued, but such resistance being an offence under s. 186, it may send be accused before a Magistrate to be dealt with according to law.—Rule Nisi in the last of Moner Chender Doss, 11 W. R. 62, Civ. Rul. [Bayley and Hobhouse, J. 1860.]

If a bailiff break the doors of a third person in order to execute a decree against a adgment-debtor, he is a trespasser if it turn out that the person or goods of the debtor me not in the house; and under such circumstances the owner of the house does not, by abstracting the bailiff, render himself punishable under s. 183 or s. 186 of the Penal Code.

—REG. v. GAZI KOM ABA DORE, 7 Bom. H. C. R. 83. [Gibbs and Melvill, J]. July 28, 1870.] But see cl. 1 of s. 99 of the Penal Code, which says that "there is no right of private defence against an act done by a public servant acting in good faith under colour this office, though that act may not be strictly justifiable by law."

THE refusal of a cart-owner to give his cart on hire to a Government officer does not constitute the offence of obstructing a public servant in the discharge of his public functions within the meaning of s. 186 of the Penal Code.—Reg. v. Dhori Kullan, 9 Bom. H. C. R. 165. [Melvill and Kemball, JJ. Feb. 8, 1872.]

WHERE accused refused to allow the attachment of his property in execution of a cree passed against him by the Cantonment Small Cause Court, held that the Judge of a Court had not jurisdiction as a Magistrate to try and convict accused of an offence mader s. 186.—Empress v. Khushala, Panj. Rec., No. 22 of 1879.

THE resistance of a process of a Civil Court is punishable, under the Code of Criminal Incedure, by a Criminal Court; and such an offence is punishable under s. 186 of the lensl Code.—Reg. v. Bhagai Duffadar (10 W. R. 43; 2 B. L. R. 21, F. B.), overruling leg. v. Chunder Kant Chuckerbutty (9 W. R. 63), where it was held that the Civil Court, and not the Magistrate, had jurisdiction to fine for resisting a process of a civil Court. The case of Reg. v. Bhagai Duffadar has been followed in that of Manickandra Das (2 B. L. R., A. C. J., 188), in which a Judge of a Small Cause Court in the louisil found a judgment-debtor guilty of resisting an officer of the Court in attaching superty in satisfaction of the decree, and fined him; but the High Court held that the budge had acted without jurisdiction; he ought to have sent the judgment-debtor before as Magistrate.

In a suit filed in a Mamlatdar's Court under Bom. Act III. of 1876, the plaintiff obused a decree against the accused for possession of a certain piece of land. When the limited arroceeded to execute the decree, he found that there was no land corresponding to the boundaries set forth in the plaint, and that the parties were joint-owners and joint-occupation of the land in dispute. Finding himself unable to execute the decree, he Mamlatdar referred the matter to the Collector for advice. The Collector, on looking to the papers of the case, ordered a surveyor to execute the decree by dividing the land dispute, and putting the decree-holder in possession of his share. The surveyor, in mempting to execute the decree, was obstructed by the accused, who was thereupon tried ad convicted of the offence of voluntarily obstructing a public servant in the discharge this public functions under s. 186 of the Penal Code (Act XLV. of 1860). Held (recrising the conviction) that, as the Collector had no legal authority to issue the order to be surveyor in execution of the Mamlatdar's decree, the surveyor acting under that order as not discharging a public function, and the act of the accused was not an offence gainst s. 186 of the Penal Code. Held, further, that the Collector's order was so envely ultra vires as to leave no room for the operation of either the first or the second lause of s. 99 of the Penal Code.—Queen-Empress v. Tulsiram, I. L. R., 13 Bom. 168, Birdwood and Parsons, JJ. May 3. 1888.]

A PERSON nominated by the Collector, under s. 69 of the Bengal Tenancy Act, for the purpose of making a division of crops between the landlord and the tenant, is not a subject servant within the meaning of s. 186 of the Penal Code.—CHATTER LAI v. THACOOR SERNAD, I. L. R., 18 Cal. 518. [Petheram, C. J., and Beverley, J. June 11, 1891.]

To spread a false report, and thereby prevent persons from bringing their children of vaccination to the public vaccinator, is not an offence under the Penal Code, s. 886, QUEEN-EMPRESS v. THIMMACHI, I. L. R., 15 Mad. 93. [Wilkinson and Shephard, Oct. 16, 1891.]

SECS. 187, 188.] CONTEMPTS OF LAWFUL AUTHORITY, &c.

A DISTRICT Judge ordered that the house of the defendant in a su him be searched and certain property brought to the Court, and appoint to carry out this order. The commissioner went to the house, but the doors, and would not admit him. A crowd collected, and the com be unsafe to proceed to carry out the order by force, and was unable to d The defendant was prosecuted, and sentenced under the Penal Code, s. \$ the lacts disclosed no offence under that section - QUEEN-EMPRESS v. Somme 15 Mad. 221. [Wilkinson and Subrahmanya Ayyar, J]. Jan. 25, 28, 1892.]

WHERE a Civil Court peon was sent by a Munsif to attach certain prothe peon reporting that he had been obstructed in making the attachme sent the case to the Deputy Magistrate for investigation and trial, and the Di trate summarily tried the accused under s. 186 of the Penal Code, dismissed awarded compensation of Rs. 20 to the accused, held that the award of comp illegal: the poon, though nominally the informant in the case, was not t plainant, nor could the proceedings properly be said to have been institut Deputy Magistrate on his information.—BHARUT CHUNDER NATH V JABED I. L. R., 20 Cal. 481. [Pigot and Hill,]]. Sept. 19, 1892.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp. Sanction.

187. Whoever, being bound by law to render or furnish assist public servant in the execution of his m Omission to assist public intentionally omits to give such assistant servant when bound by law to give assistance. punished with simple imprisonment for a may extend to one month, or with fine which may extend to two hund or with both; and if such assistance be demanded of him by a pub legally competent to make such demand for the purposes of executing cess lawfully issued by a Court of Justice, or of preventing the cou an offence, or of suppressing a riot or affray, or of apprehending charged with or guilty of an offence, or of having escaped from law shall be punished with simple imprisonment for a term which me six months, or with fine which may extend to five hundred rupees, of

In this section the word "offence" denotes a thing punishable under under any special or local law as defined in this Code. S. 40, Penal Code.

A MAGISTRATE directed a landholder "to find a clue" in a case of the fifteen days, and to assist the police." Held that such order was not authorite and 91 of Act X. of 1872 (corresponding with ss 43 and 42 of Act X. of 18 conviction of such landholder, under ss. 187 and 188, Penal Code, for dim such order, was not maintainable.-Empress v. Bakhshi Ram, I. L. R. [Pearson, J. Aug. 18, 1880.]

An omission or neglect by a zamindar, when called upon under s. 21 of 1817 to nominate some one to fill the office of village-watchman, which had be is not an offence under either s. 187 or s. 188 of the Penal Code.—In re KAN GHOSE, 7 C. L. R. 575. [Morris and Prinsep, JJ. Jan. 19, 1881.]

Disobedience to order duly promulgated by public ser-

188. Whoever, knowing that by an order promulgated by a put lawfully empowered to promulgate such directed to abstain from a certain act, or to order with certain property in his possessit

his management, disobeys such direction, shall, if such disobedien tends to cause obstruction, annoyance, or injury, or risk of obstruct ance, or injury, to any persons lawfully employed, be punished imprisonment for a term which may extend to one month, or with may extend to two hundred rupees, or with both; and if such d causes or tends to cause danger to human life, health, or safety, o tends to cause a riot or affray, shall be punished with imprisoning description for a term which may extend to six months, or with fine extend to one thousand rupees, or with both.

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Explanation.—It is not necessary that the offender should intend to protherm, or contemplate his disobedience as likely to produce harm. It is that he knows of the order which he disobeys, and that his disobedience uces, or is likely to produce, harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such w, directing that a religious procession shall not pass down a certain street. A knowdisobeys the order, and thereby causes danger or riot. A has committed the offence ed in this section.

Rulings.

\$. 188 of the Penal Code should be read with ss. 133 to 144 of the Criminal Procedure (Act X. of 1882). Ss. 133 and 144 run as follow:-

he Local Government in this behalf, a Magistrate of the first class, considers, on reing a report or other information, and on taking such evidence (if any) as he thinks fit, that any unlawful obstruction or nuisance should be removed from any way, river, or mel, which is, or may be, lawfully used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandise, by reason being injurious to the health or physical comfort of the community, should be suped, or removed, or prohibited, or

that the construction of any building, or the disposal of any substance as likely to conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall, and thereby cause to persons living or carrying on business in the neighbourhood, or passing by, and tonsequence, its removal, repair, or support, is necessary, or

that any tank, well, or excavation adjacent to any such way or public place should be ed in such a manner as to prevent danger arising to the public,

such Magistrate may make a conditional order requiring the person causing such truction or nuisance, or carrying on such trade or occupation, or keeping any such s or merchandise, or owning, possessing, or controlling such building, substance, tank, , or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to suppress or remove such trade or occupation; or .

to remove such goods or merchandise; or

to prevent or stop the construction of such building; or

to remove, repair, or support it; or

to alter the disposal of such substance; or

to leace such tank, well, or excavation, as the case may be; or

to appear before himself or some other Magistrate of the first or second class, at a ine and place to be fixed by the order, and move to have the order set aside, or modified manner hereinafter provided.

Mo grader duly made by a Magistrate under this section shall be called in question in Civil Court.

A "public place" includes also property belonging to the State, campunds, and grounds left unoccupied for sanitary and recreative purposes.—Crim. A Late (Act X. of 1882), s. 133.

Laces where in the opinion of the District Magistrate, a Sub-divisional Magistre of any other Magistrate specially empowered by the Local Government or the Hagistrate to act under the section, immediate prevention or speedy remedy is the local coronaction of the case, such Magistrate may, by a written order, stating the material facts of the case, additional manner provided by s. 134 (of Act X. of 1882), direct any person to abstain

WHENEVER A District Magistrate, a Sub-Divisional Magistrate, or, when empowered 15 U

from a certain act, or to take certain order with certain property in his possession of under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, or struction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, or danger to human life, health, or safety, or a riot or an affray. An order under this section may, in cases of emergency, or in cases where the circumstances do not admit of the serving, in due time, of a notice upon the person against whom the order is directed, be passed ex parte. An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place. Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him, or by his predecessor in office. No order under this section shall remain in force for more than two months from the making thereof, unless, in cases of danger to human life, health, or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.—Crim. Pro. Code (Act X. of 1882), s. 144.

THE following extract, taken from the Report of the Indian Law Commissioners, fully explains the reason for the enactment of s. 188 of the Penal Code: "We have, to the best of our ability, framed laws against acts which ought to be repressed at all times and places, or at times and places which it is in our power to define. But there are acts which at one time and place are perfectly innocent, and which at another time or place are proper subjects for punishment; nor is it always possible for the Legislature to say at what time or at what place such acts ought to be punishable. Thus, it may happen that a religious procession, which is in itself perfectly legal, and which, while it passes through many quarters of a town, is perfectly harmless, cannot, without great risk of tumult and outrage, be suffered to turn down a particular street inhabited by persons who hold the ceremony in abhorrence, and whose passions are excited by being forced to witness it. Again, there are many Hindu rites which in Hindu temples and religious assemblies the law tolerates, but which could not with propriety be exhibited in a place where English gentlemen and ladies are in the habit of frequenting for purposes of exercise. Again, at a particular season, hydrophobia may be common among dogs at a particular place; and it may be highly advisable that all people at that place should keep their dogs strictly confined. Again, there may be a particular place in a town which the people are in the habit of using as a receptacle for filth: in general, this practice may do no harm, but an unhealthy season may arrive when it may be dangerous to the health of the population; and, under such circumstances, it is evidently desirable that no person should be allowed to add to the nuisance. It is evident that it is utterly impossible for the Legislature to mark out the route of all religious processions in India, to specify all the public walks frequented by English ladies and gentlemen, to foresee in what months and in what places hydrophobia will be common among dogs, or when a particular dunghill may become danger ous to the health of a town. It is equally evident that it would be unjust to punish person who cannot be proved to have acted with bad intentions for doing to-day what yesterday was a perfectly innocent act, or for doing in one street what it would be perfectly innocent to do in another street, without giving him some notice. What we propose, there fore, is to empower the local authorities to forbid acts which these authorities consider a dangerous to the public tranquillity, health, safety, or convenience; and to make it an of fence in a person to do anything which that person knows to be so forbidden, and which may endanger the public tranquility, health, safety, or convenience. It will be observe that we do not give to the local authorities the power of arbitrarily making anything a offence. For unless the Court, before which the person who disobeys the order is tried shall be of opinion that he has done something tending to endanger the public tranquillity health, safety, or convenience, he will be liable to no punishment. The effect of the order of the local authority will merely be to deprive the person who knowingly disobeys th order of the plea that he had no bad intentions. He will not be permitted to allege that if he has caused harm or risk of harm, it was without his knowledge."

BEFORE a person can be legally punished for refusal to remove and reconstruct roal drains, evidence ought to be taken whether the party has disobeyed the Magistrate's or der, and that such disobedience has produced, or is likely to produce, harm.—Queen a Shabuckram Bukoolee, 2 W. R. 32. [Kemp and Glover, JJ. Feb. 8, 1865.]

THE mere non-service personally of a notice to remove a nuisance is not a sufficien ground for the Court, under s. 434 of the Code of Criminal Procedure (Act XXV. of 1861) corresponding with s. 222 of the new Code of Criminal Procedure (Act X. of 1882), to se aside the Magistrate's order when it appears that the parties did not take the objection

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before the Magistrate, and that they, in fact, admitted knowledge of the existence of the notice, and sought to excuse their failure to obey it.—HOCHAN v. ELLIOT, 5 W. R. 4. . [Seon-Karr and Macpherson, JJ. Jan. 15, 1866.]

A MAGISTRATE cannot, under s. 62, Criminal Procedure Code (Act XXV. of 1881), corresponding with s. 144, new Code of Criminal Procedure (Act X. of 1882), in general erms, forbid two parties to use any musical instrument in the neighbourhood of each ther's house, though he may forbid their doing so for the purpose of mutual annoyance. -INTHE MATTER OF RAM CHUNDER GEER GOSSAIN, 6 W. R. 40. [Jackson and Markby,]].

HELD that an Assistant Magistrate, as the comes within the definition of the term any Magistrate," was competent to pass an order under s. 62 of the Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Proredure (Act X. of 1882), which contemplates circumstances under which an immediate order's urgently required, and in this respect differs from s. 188 of the Penal Code .-GOVT. P. MAHOMED BUKSH, I Agra H. C. R. 23. [Turner, J., and Spankie, Offg. J. Sep.

A SENTENCE of rigorous imprisonment passed by a Magistrate, F. P., under s. 188 the Penal Code, for disobedience to an order duly promulgated by a public servant, alered to one of simple imprisonment, as the Magistrate's finding did not show that the ase came within the latter part of the section, in which case alone the infliction of rigorms imprisonment was authorized.—Reg. v. RATANRAO BIN MAHADEVRAO CHAVAN, 3 Bom. H. C. R. 32. [Couch, C J., and Newton and Warden, J]. Oct. 3, 1866.]

HELD that the Magistrate, as President of a Municipal Committee, has no power to sae an order forbidding, as a nuisance, an act not included in the rules passed under Act XXVI. of 1850.—Govt. v. Sham Soonder, 1 Agra H. C. R. 34. [Turner, J., and Spankie, Ofig. J. Dec. 12, 1866.

A MINOR, whose property was under the Court of Wards, having been fined by the lagistrate for disobedience by his servants of a lawful order duly promulgated with remence to such property, the order of the Magistrate was reversed, on the ground that the fence was not committed by the minor in person, and that the prosecution was misdietted.—Crown v. SIRDAR DYAL SINGH, Panj. Rec., No. 84 of 1866.]

THE accused was fined by the Magistrate for not having closed a drain in pursuance the verbal order of the Magistrate. Held that the Magistrate should have proceeded nder ch. 20 of Act XXV. of 1861 (corresponding with ch. 10 of Act X. of 1882), inasmuch sthe nuisance was not one from which immediate danger was apprehended, and not under 62 (or s. 144 of the new Code), which empowers the Magistrate to put an immediate elemination to the continuance thereof. A written order not having been given, the recedure was faulty, and therefore quashed. Only Magistrates of a district or division un act under ch. 20, s, 308.—Govr. v. Choonee Lall, 2 Agra H. C. R. I. [Turner, J., nd Spankie, Offg. J. Jan. 16, 1867.]

CONVICTIONS and sentences for disobeying an order duly promulgated by a public evant reversed, as the Mamlatdar, who stated that he proceeded under Bom. Act V. of 364, was not thereby empowered to make the order.—REG. v. BHAU BIN VITHU, 3 Bom. C. R. 53. [Newton and Tucker, JJ. Jan. 17, 1867.]

It is not a lawful order to direct a man not to leave his home without informing the mbardar of the village or the police (Crown v. Boolakee, Panj. Rec., No. 12 of 1868); without a ticket-of-leave or the permission of the police.—Crown v. Hurnam Singh, anj. Rec., No. 45 of 1867.

CONVICTION and sentence for disobeying an order made by a Mamlatdar, under Bom. R.V. of 1864, directing the accused to keep a gateway open, reversed, as the Mamlatdar s not empowered under that Act to make the order.—REG. v. KHANDOJI BIN TANAJI, Bom. H. C. R. 21. [Couch, C.J., and Newton, J. Mar. 10, 1868.]

A CONVICTION under s. 188 of the Penal Code of disobedience of an order duly proalgated by a public servant will not stand where the evidence fails to show that the disedience caused, or tended to cause, obstruction, annoyance, or injury, or risk of obstrucannoyance, or injury, to any person lawfully employed, or that it caused, or tended cause, danger to human life, health, or safety, or caused, or tended to cause, a riot or ray.-PRO., Mar. 16, 1868, 4 Mad. H. C. R., Ap., 5.

SEC. 188.]

In a case of public nuisance under s. 200 of the Penal Code, it must be proposited injury, danger, or annoyance has been caused, either in regard to the enjoyment of purity, or the exercise of a public right on the part of a portion of the community or any particular class of people. The fact that there is a special law to most a particular offence (in this case, cattle-trespass) does not prevent the punishment of the offence which could have been rightly punished under the Penal Code, if an offence which could have been rightly punished under the Penal Code was established.—Onooram v. Lamessor; Webster v. Keena, 9 W. R. 20, [Penal Code was established.]

Held that an order passed by a Mamlatdar under Bom. Act V. of 1864, directing the accused to keep open a right-of-way to a privy, being in reality an injunction to suitain from disturbing the possession of the parties, was, therefore, within the jurisdisting the Mamlatdar.—Reg. v. Krishnashet bin Narayanshet, 5 Bom. H. C. E. (Couch, C.J., and Newton, J. June 17, 1868.)

Held that a Magistrate cannot proceed to pass an order for the removal of and sance, under s. 308 of the Code of Criminal Procedure (Act XXV. of 1801), confidentially with s. 133 of the new Code of Criminal Procedure (Act X. of 1882), without on the party to show cause why the order should not be passed against him, and thearing the objections, even if they are filed after the time fixed for their process but before he takes up the case. A Magistrate's power to fill up a tank is, by a set of s. 133 of the new Code), limited to having it fenced in: but where the tank is public as injurious to the community, he may, under that section, treat it as public as and cause it to be filled up.—In the Case of Bistoo Chunder Chuckerbutty, 12 4.2.

[Loch and Glover,]] Aug. 13, 1868.]

S. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding will s. 144 of the new Code of Criminal Procedure (Act X. of 1882), does not authorize a gistrate summarily to direct the owner of a tank in a dry bed of a river to destroy the last on the ground that they are an obstruction to the public in the lawful enjoyment of a river, and that the stopping of the water interferes with the health of the publicate of Perrence in the Case of Gholam Durbesh, 10 W. R. 36. [Jackson and Hobburgh, Sep. 10, 1868.]

THE powers of a Magistrate and the procedure to be observed by him in inciding all ders under ss. 62 and 308 of the Code of Criminal Procedure (Act XXV. of ENGL) or responding with ss. 144 and 133 of the new Code of Criminal Procedure (Act X. of 1804) discussed, and the difference between these sections pointed out.—In the Matter of E Hurimohan Malo; (2) Jayakrishna Mookerjee, 10 W. R 53; 1 B. L R., A. Cr. at [Phear and Hobhouse, J]. Nov. 20, 1868.]

WHERE accused was convicted, under Act XXV. of 1850, of disobedience of an edder made by the Municipal Commissioners of Puna, and was sentenced to pay a fine of twenty rupees, and (eight days time being allowed him within which to comply with the order) a further fine of two rupees for each day during which he should continue wiffell to disobey such order, the latter part of the sentence was reversed by the High Court of being illegal.—Reg. v. Jagannathehat bin Appabhat, 5 Bom. H. C. R. 103. [Newton in Tucker, J]. Dec. 3, 1868.]

ORDERS by Sub-Magistrates, in one case directing the removal of a house, on the ground that it was in a dangerous and dilapidated condition, and in the other directing the removal of a granary, on the ground that it had been improperly erected upon land in quired to be kept unoccupied for common purposes, were set aside by the High Country of the Sub-Magistrate acted without jurisdiction.—Pro., Feb. 12, 1869, 4 Mad. & C. R., Ap., 34.

It is competent to a Magistrate to issue an order to certain persons in possession as management of a Hindu temple to widen the doorway in order to give the necessary we tilation. and to afford proper means of ingress and egress to the pilgrims. Even if the temple were private property, the order could be passed, as the building was open to the Hindu public.—Reg. v. Ramchundra Eknath, 6 Bom. H. C. R. 36. [Couch, C.J., as Newton, J. April 21, 1869.]

THERE is nothing in s. 62 of the Code of Criminal Procedure (Act XXV. of 1861) corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1884) to justify a Magistrate in making an order for the removal of a bund, or other obstruction on nuisance, on the mere report of a police-constable; and before making such order he ough

talks evidence from the defendants, and, if necessary, on both sides.—QUEEN v. BHYROO RAR SINGH, 21 W. R. 46; 3 B. L. R., A. Cr., 4. [Norman and Jackson, J]. May 3, 1869.]

WHERE an order under s. 318 of the Criminal Procedure Code (Act XXV. of 1861), presponding with s. 145 of the new Code of Criminal Procedure (Act X. of 1882), was under between A on the one side, and B and the then tenants of B on the other, declaring the A was in possession of the property in dispute, held that this order was only binding a the actual parties to the case before the Magistrate, and that subsequent tenants of B and not be criminally punished for disobeying the order in question.—In the Matter Gopal Burnawar, 3 B. L. R, A. Cr., 13. [Norman and Jackson, JJ. May 10, 1869.]

THE order contemplated by s. 62 of the Code of Criminal Procedure (Act XXV. of 51), corresponding with s. 134 of the new Code of Criminal Procedure (Act X. of 1882), a particular and specific order addressed to a particular person or particular persons to so or abstain from a particular act or particular acts. That section does not empower a lagistrate to pass a general order to persons not to allow their cattle or horses to run at the order be public roads, nor can such an order be passed under Act III. of 1857, which publics only to injusy done by cattle to crops, &c., and to the sides of public roads and shankments.—QUEEN v. AMERRUDDEEN, 12 W. R. 36; 3 B. L. R., A. Cr., 45; 6 B. L. 1862. [Norman and Jackson, JJ. July 26, 1869.]

A. MAGISTRATE issued an order warning owners of cattle to take proper care of them, that, in case of disobedience or neglect, they would be punished according to law, and that, in case of disobedience under s. 188 of the Penal Code. Held that the Madistrate was not competent, under s. 62 of the Code of Criminal Procedure (Act XXV. 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882)

pass such an order. The order contemplated under this section is in the nature of an imaction, and such an order passed by a Magistrate would not be legal. That the condiction under s. 188 of the Penal Code was illegal.—In re Amiraddi, 3 B. L. R., A. Cr.,
[Norman and Jackson, JJ. July 26, 1869.]

THE power of issuing orders to prevent breaches of the peace, &c., conferred on a Maletrate by s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with a 144 of the new Code of Criminal Procedure (Act X. of 1882), extends only to improve the property of the description set forth in ch. 22 of that Code (or ch. 12 of the new Code). Queen v. Goluck Chunder Gohoo, 12 W. R. 38. [Jackson and Markby, JJ. 1869.]

. An order issued by a Magistrate under s. 62 of the Code of Criminal Procedure (A& XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (A& X. of 1882), in consequence of a mahazirnama signed by certain persons, but without any notice to the defendant or inquiry by the Magistrate is illegal.—PRO., Aug 16, 1869, 4 Mad. H. C. R., Ap., 67.

Barore a conviction can be had under s. 188, Penal Code, it must be proved that the becused knew that an order had been promulgated by a public servant directing such actused person to abstain from a certain act.—Queen v. Ramtonoo Singh, 12 W. R. 49. [Kensp and Glover, JJ. Aug. 28, 1869.]

A MAGISTRATE issued a notification that all persons desirous of carrying arms should take out a license enabling them to do so under s. 26 of Act XXXI. of 1860; and certain persons were, in consequence of this notification, arrested and brought before him, charged in a pelific-report with carrying arms without license. No summons or warrant had been applied for, or any complaint lodged before the Magistrate, previous to the arrest of the prisoners. No charge in writing was framed as required under ss. 250 to 251 of the Criminal Procedure Code (Act XXV. of 1861), corresponding with ss. 253 to 255 of the new Coda of Criminal Procedure (Act X. of 1882). No evidence was taken; but the prisoners admitted carrying the fire-arms. The Magistrate convicted them, under s. 188 of the Peasl Code, of disobedience to an order duly promulgated by a public servant. There was no avidence that the disobedience would cause, or tend to cause, annoyance, obstruction, as injury to human life, health, or safety. Held that the convictions must be quashed. Necessity of observing the rules laid down in the Criminal Procedure Code remarked on.—Quern v. Nandkumar Bose, 3 B. L. R., Ap., 149. [Markby and Glover, J]. Sep. 14, 140.]

. # 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with . 144 of the new Code of Criminal Procedure (Act X. of 1882), does not apply to disputes

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connected with lands, but refers specially to nuisances and other similar matters in which immediate action is necessary in order to avoid the risk of illegal consequences.—RABULLUB ADDHYA v. GOBIND CHUNDER MOITRO, 12 W. R. 66. [Kemp and Glover.]]. Oct. 27, 1869.]

Oomra was convicted of stealing a heifer. Moola bought the stolen heifer from accused No. 1, and was ordered by the Deputy Commissioner to give notice of the purchase at the thana. This Moola omitted to do, and he was tried and convicted under s. 188. Penal Code. Held that Moola had not committed an offence under that section, as the order in question was not one which the Deputy Commissioner was lawfully empowered to promulgate within the meaning of that section.—Oomra v. Crown, Parij. Rec., No. 17 of 1869.

THE Sub-Magistrate issued an order to two persons directing them to remove a certain embankment whereby the adjacent lands of the complainant were in danger of being flooded. Held that the act of the defendant was not an act which could be prohibited by the Sub-Magistrate under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861) corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882). Pro. Feb. 22, 1870, 5 Mad. H. C. R., Ap., 19.

A MAGISTRATE has no power under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X of 1882), to issue any order which is by its very nature irrevocable. All that he has power to compel the owner of property to do is to take certain order with it. Such power does not extend to an order to cut down a large quantity of trees.—UTTAM CHUNDER CHATTERJEE J. 3W. R. 72; 5 B. L. R. 131. [Bayley and Markby, JJ. May 14. 1870.]

WHERE a Deputy Magistrate, without taking evidence, made an order under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X.Of 1882), changing a day on which a haut used to be held, and, subsequently, on taking evidence, found that his first order was wrong, and passed without jurisdiction, he was held to have acted properly in recalling his first order.—MOHUN SIRDAR ON BEHALF OF BUNWAREE LALL v. OBHOY CHURN MUKHOPADYAH, NAIB OF BABOO DEBENDER NATH TAGORE, 13 W. R. 72. [Kemp and Jackson JJ. May 14, 1870.]

A MAGISTRATE cannot pass an order under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act XXV. of 1882), directing a person to abstain from a certain act, or to take certain order with certain property, unless he is satisfied that such direction on his part is likely to prevent, or tends to prevent, a riot or affray; nor can he pass an order under that section, or under s. 282 (—s. 107 of the new Code) or any other section of the law, calling upon a person to enter into recognizances not to collect certain cesses, though under s. 282 (or s. 107 of the new Code) the Magistrate may bind him to keep the peace, if there is sufficient evidence to show that a breach of the peace is imminent through his act.—In the Matter of Luchmerput Singh, 14 W. R. 3. [Loch and Hobhouse,]]. June 11, 1870.

A MAGISTRATE cannot pass an order under s. 62 of the Code of Criminal Procedure (A& XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (A& X. of 1882), without first calling on the defendant to show cause why the order should not be passed, and taking any evidence which the defendant may adduce.—RAI LUCKMEEPUT SINGH, 14 W. R. 17; 5 B. L. R, Ap., 81. [Loch and Glover, J]. July 9, 1870.]

Held (Phear, J., dissenting) that an order passed by a Magistrate under s. 62 of the Code of Caiminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), is not of the nature of a judicial proceeding, and therefore cannot be interfered with by the High Court under s. 404 of that Code (or s. 430 of the new Code).—Abbas Ali Chowdhry v. Illim Meah, 14 W. R. 26°; 6 B. I. R. 74. [Colon, C.]., and Bayley, Kemp, Jackson, and Phear, J. Aug. 17, 1870.] Contra, Sheeb Chunder Bhattacharjee v. Sadut Ally Khan, 4 W. R. 12, which has been overruled by Bykuntram Shaha Roy v. Meajan, 18 W. R. 47; 10 B. L. R. 434. But followed in Sheikh Laloo v. Adam Sirkar, 17 W. R. 37, infra, p. 159; and in Lalla Mitterjeet Singh v. Rajcoomar Sirkar, 18 W. R. 22, infra, p. 159.

WHERE an order had been made by a Magistrate under s. 318 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 145 of the new Code of Criminal Pro-

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Edure (Act X. of 1882), in favour of A in respect of certain land, and B subsequently obtained an order from the Collector declaring him entitled to the same land, in pursuance of which he was put into possession by an officer of the Collector, it was held that, before Ecould be convicted under s. 188 of the Penal Code of disobeying an order made by a mblic officer, it should be proved that B was aware of the order under s. 318 (or s. 145 of the new Code), and that, having that knowledge, he disobeyed it.—ABELAKH LALL v. SIENAN SINGH, 15 W. R. 50. []ackson and Macpherson, JJ. April 14, 1871.]

Where a complaint was made by A that timber belonging to his master, which had been cut and stacked in a certain place, had been removed by B, who said that the timber as cut, not by A's master, but by himself, and that he had stacked it in a place where he always put his timber, it was held that the Magistrate could not proceed under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act XXV. of 1882), but was bound to try the charge brought against B, and either restore the timber to A, or leave it where it was according to the result of the investigation.—Kartick Chunder Pale v. Chunder Nath Chuckerbutty, 5 W.R. 56. Plackson and Mookerjee, JJ. April 24, 1871.]

The purchaser of an interest in land at a sale in execution of a decree obtained an order or possession under s. 263 or 264, Act VIII. of 1859, and a dispute arose between him and mother person, who had some interest in the land, as to what passed under the sale-certificate. Without ascertaining the rights of the parties, the Magistrate made certain orders, the effect of which was to exclude the auction-purchaser for some time from exercising the right alleged to have passed to him under the purchase. Held that the Magistrate ought to have made no order at all with reference to the property, leaving it to the parties to determine their rights in the Civil Court, and that he had ample power under the section to do what was necessary to prevent a breach of the peace. The High Court may interest with and quash any order passed by a Magistrate under s. 62, Code of Criminal Produce (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Produce (Act XXV. of 1882), when the order is such that it was beyond the power and out the jurisdiction of the Magistrate to make it. Quare.—Whether pleaders have a right to be heard in such case.—Sheikh Laloo v. Adam Sirkar; Govt. v. Surjakant Actagla; Dengoo Sheikh v. Adam Sirkar, 17 W. R. 37. [Bayley and Markby, J]. Mar. 1872.] Approves Abbas Ali Chowdhry v. Illim Meah, 14 W. R. 46, supra, p. 158. Dissented from in Lalla Mitterject Singh v. Rajcoomar Sirkar, 18 W. R. 22, infra.

AN order in writing under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), a necessary to sustain a charge under s. 188 of the Penal Code. Quære.—Whether a lagistrate has not power to proceed under the former section instead of under s. 308 or s. 133 of the new Code) against a party for disobeying an order issued by him directing the party to clean a privy pronounced to be a nuisance.—In the Matter of Pitameter Dev. 17 W. R. 57. [Couch, C.]., and Ainslie, J. April 27, 1872.]

Where a new haut was established about half a mile from a long-established market, and the Deputy Magistrate was of opinion that the holding of the two hauts on the same are of the week would induce a breach of the peace, held that the order passed by the bepty Magistrate, under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), orresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), directing petitioner to abstain from holding his haut on certain days, was not beyond his power, rout of his jurisdiction, to pass, and therefore was one with which the High Court could of interfere under s. 404 of the Code of 1861 (or s. 439 of the Code of 1882).—LALLA HITERIBET SINGH v. RAJCOOMAR SIRKAR, 18 W. R. 22. [Kemp and Glover, J], June 5. 1872.] Dissents from Sheikh Laloo v. Adam Sirkar, 17 W. R. 37, supra. Follows bas Ali Chowdhry v. Illim Meah, 14 W. R. 46, supra, p. 158.

WHERE, by direction of Government, the Magistrate promulgated an order under s. 62, ode of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144, new Code t Criminal Procedure (Act X. of 1882), directing all persons to abstain from hook-swingg or other self-torture in public, and from the abetment thereof, and no such order was non the record, the High Court annulled the conviction of the prisoners by the Deputy lagistrate under ss. 188, 114, Penal Code, for having knowingly disobeyed that order.—
**THE MATTER OF DWARICK MISSER, 18 W. R. 30. [Kemp and Glover, J]. July 19, 1872.]

A MAGISTRATE, or other officer exercising the powers of a Magistrate, is legally com-

s. 144, new Code of Criminal Procedure (Act X. of 1882), to issue an order prohibiting landholder from holding a haut on any particular spot on his estate on particular days, on the ground that such an order is likely to prevent a riot or an affray.—BYKUNTRAM SHAHA ROY T. MEAJAN, 18 W. R. 47; 10 B. L. R. 434. [Couch, C.J., and Bayley, Kemp, Mittle, and Ainslie, JJ. Sep. 9, 1872.] Overrules Sheeb Chunder Bhuttacharjee v. Saadut Ally Khan, 4 W. R. 12.

Accused was convicted, under s. 188 of the Penal Code, of exposing beef for sale in the city of Amritsar, and thereby disobeying an order duly promulgated. He was sentenced to rigorous imprisonment for two months, and his knife and scales were ordered to be confiscated. The Chief Court, on the revision side, cancelled the order of confiscation, as being unauthorized by law.—Crown v. Imami, Panj. Rec., No. 13 of 1872.

The words, "or to do any act that may probably occasion a breach of the peace," in s. 282, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 107, new Code of Criminal Procedure (Act X. of 1882), were construed to mean a wrongful act, and not one which the person may lawfully do. It was not intended that a person should be prevented by a Magistrate from exercising his right of property, because another person would be likely to commit a breach of the peace if he did so. Therefore, where a Magistrate issued an order preventing a householder from building a wall to his own house, the order was set aside as illegal.—Cashi Chunder Das v. Hurrikishore Dass, 19 W. R. 47; 10 B. L. R. 441. [Couch, C.J., and Birch, J. Mar. 19, 1873.]

In a case in which the Magistrate passed an order under s. 518, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 144, new Code of Criminal Procedure (Act X. of 1882), for closing a haut on the ground that it was only a mile apart from another haut, and a breach of the peace was not unlikely, the Sessions Judge recommended that the order should be set aside, s. 518 applying only when a breach of the peace was imminent. Held that, under expl. 2, s. 518, the order could be made in all cases upon such information as satisfied the Magistrate, and as the order was one which the Magistrate had power to make, and was not contrary to law, the High Court could not, under \$. 207, Code of Criminal Procedure, 1872 (corresponding with s. 439, new Code of Criminal Procedure, 1882), set it aside. Orders made under s. 518 are not judicial proceedings, and therefore are not within s. 297.—Bhola Nath Bose v. Komuruddin, 20 W. R. 53 [Couch, C.J., and Birch,]. July 18, 1873.]

A SECOND-CLASS Magistrate, who issues an order under s. 518 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), has no jurisdiction to punish for its disobedience by reason of s. 487 of the Criminal Procedure Code (or ss. 131 and 132 of the new Code).—REG. T. RANCHOD DAYAL, 10 Bom. H. C. R. 424. [Melvill and Nanabhai Haridas, J]. Oct. 29, 1873.]

The accused were convicted by the Deputy Commissioner of Rohtak, under s. 180 of the Penal Code, of disobeying an order issued by the Lieutenant-Governor, and dated 7th April 1865. Para. 3 of the order was as follows: "His Honor desires that, in the case of every kacha road in this province, which has to support a traffic carried on carts, one side may be assigned to the carts, and one reserved for light traffic." The accused drove heavy carts on that part of a road which was set apart for light traffic. Held that the order of the 7th April 1865 was not legal, and the conviction could not stand.—Crown v. Udnir, Panj. Rec., No. 8 of 1873.

The accused were caught fishing in the canal near Dinanager in the Gurdaspur district with nets, the meshes of which were smaller than one-inch and-a-quarter square, or six inches all round, the minimum size fixed by the Financial Commissioner's Circular No. 40 of 1870. The accused did not hold licenses for fishing. The Magistrate convicted the accused under s. 188 of the Penal Code. Held (by Lindsay, J) that the Financial Commissioner's circular was not authorized by law, and the conviction must be quashed. Held (by Campbell, J.) that the facts did not disclose an offence under s. 188.—Crown s. Kanhaya, Panj. Rec., No. 11 of 1873.

THE operation of s. 518, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 144, new Code of Criminal Procedure (Act X. of 1882), is confined to cases wherein the opinion of the Magistrate, the delay which would be caused by adopting a different procedure from that specified in the explanation to that section would occasion a greater evil than that suffered by the person upon whom the order is made, or would defeat the in-

CHAP. X.] CONTEMPTS OF LAWFUL AUTHORITY, &c.

Rention of this (the 39th) chapter (or ch. 11 of the new Code). Where a Magistrae out hearing the petitioner, or giving him an opportunity of being heard, and simply the foundation of a police-officer's report, directed the petitioner to abstain from hole is haut upon his land on a certain day, because another party had long been accustom to hold a haut upon his land adjacent to the petitioner's haut on the day following that in which the petitioner held his haut, it was held that his order passed under s. 518 was ultra vires, the police-officer's report being vague and insufficient, and the private interest of this kind not affording a ground for making an order under s. 518, or any other order under the Criminal Procedure Code.—Banke Madhub Ghose v. Wooman Nath Roy Chowdhry, 21 W. R. 26. [Phear and Morris, JJ. Jan. 18, 1874.]

THE pay of G, a servant of a railway company, fell due on the 1st April. On the 31st March, the Civil Court granted a prohibitory order under Act VIII. of 1859, attaching G's pay, and the order was served on the Auditor of the Company on the 1st April. The Auditor returned the order, having endorsed on it that it was dated March 31st, and G's pay was not due till the 1st April. The order was again served on the 1st April, and the Auditor again returned it with the remark that, since the first service, the pay due to G had been made over to him. The Auditor was convicted under s. 183 for resisting the taking of property by the lawful authority of a public servant. Held that the conviction was bad under s. 183, and could not be sustained under s. 188, as on the 31st March there was no debt due to G on which the prohibitory order could operate, and the Auditor was, therefore, not bound to obey such an order.—LIGHTFOOT v. CROWN, Panj. Rec., No. 9 of 1874.

To support a conviction under s. 188, Penal Code, there must be evidence that the order has been promulgated by a public servant lawfully empowered to promulgate such surder; s. 518 of the Code (or s. 144 of the new Code), which relates to local nuisances, has no application to a case like this, which refers to the collection of market-dues.—
Queen v. Sobun Singh, 23 W. R. 57. [Kemp and Birch, J]. April 5, 1875.]

An order which declares that, as between the parties to a contention, certain land in the does not belong to the public, is not one the contravention of which can form the subject of an order under the Penal Code, s. 188.—UNNODA PERSHAD DUTT v. RANGE SHAMA SOONDUREE, 24 W. R. 20. [Glover and Mitter, J]. June 28, 1875.]

The extraordinary powers conferred on the High Court by the Letters Patent, s. 15, extend to the revising of orders passed under s. 518 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882). When a Magistrate makes an order under this section, on the ground that he has received information, and is satisfied with it, no interference is possible; but when he states the nature of the information, the High Court can see whether such information justifies the order made. Before a prohibitory order under s. 518 can be made, there ought to be information or evidence before the Magistrate that the act prohibited was likely to cause a riot or affray, and that the stoppage of that act would prevent such riot or lafray. After summoning a person to show cause why he should not enter into a bond to latery. After summoning a person to show cause why he should not enter into a bond to later the peace, the Magistrate cannot bind over that person until he adjudicates on later the peace, the Magistrate cannot bind over that person until he adjudicates on later the peace whether the peace.—Goshain Luchman Pershad Pooree v. Pohoop Narain Pooree, 24 W. R. 30. [Glover and Mitter, J]. Aug. 2, 1875.]

UNDER Act XXV. of 1861, s. 62 (or Act X. of 1882, s. 144), it is necessary that the direction should be addressed to a particular person, or particular persons, and not to the public generally, and with reference to a particular occasion only, not for a continuance.—Pro., Aug. 17, 1875, 8 Mad. H. C. R., Ap., 9.

In a civil suit to which accused was a party, the decree was that the marriage of a certain girl should be arranged for by A, another party to the suit, and that accused, her authorial uncle, should, in the meantime, have her custody only. Notwithstanding this decree, accused gave her away in marriage to B. A prosecuted accused, and the latter was convicted of disobeying a lawful order of a public servant. Held that the conviction cools not stand.—Crown v. Nand Lall, Panj. Rec., No. 3 of 1876.

A PERSON, plying a boat for hire at a distance of three miles from a public ferry, cannot be said, with reference to such ferry, to commit "criminal trespass" within the meaning of that term in s. 441 of the Penal Code. If, when directed by the order of a public servant, duly promulgated to him, to abstain from plying a boat for hire at or in

the immediate vicinity of a public ferry, a person disobcys such direction, he renders hims self liable to punishment under the Penal Code.—MUTHRA v. JAWAHIR, I. L. R., I All 527. [Spankie, J. Dec. 15, 1877.]

Where a Magistrate made an order under s. 518 of the Code of Criminal Procedum (Act X. of 1872), corresponding with s. 144 of the new Code of Criminal Procedum (Act X. of 1882), directing one of two rival haut-proprietors to remove his haut to such a distance as to render it useless for the purposes for which it was established, it was held that the order came within the purview of the Full Bench decision in Gopi Mohum Mullick v. Taramoni Chowdhrani (I. L. R., 5 Cal. 7; 4 C. L. R. 309), and might be set aside as a excess of jurisdiction.—SHARUT CHUNDER BANERJEE v. BAMACHURN MOOKERJEE, 4 C. L. R. 410. [Morris and White, JJ. Mar. 19, 1879]

A MAGISTRATE is not empowered to pass an order under s. 518 of Act X. of 1872 (corresponding with s. 144 of Act X. of 1882), which has more than a temporary operation. The grant of what is, in effect, an order for a perpetual injunction is entirely beyond his powers. When a plaintiff alleged that he had held a haut on his own land for many years on Tuesdays and Fridays; that the defendant had set up a rival haut on these days, and prevented persons from attending the plaintiff's haut; that this led to disturbances which ended in an order being made by the Magistrate prohibiting the plaintiff from holding his haut on the said days; and that the plaintiff suffered loss and damage in consequence, held that, assuming these facts to be true, the plaintiff was entitled to a decree, declaring as against the defendant, that the plaintiff had a right to hold his haut on Tuesdays and Fridays.—Gopi Mohun Mullick v. Taramoni Chowdhrant, I. L. R., 5 Cal. 7;4 C. L. R. 309. [Garth, C. J., and Jackson, Pontifex, Ainslie, Birch, Morris, White, Mittee, McDonell, Prinsep, Wilson, and Broughton, JJ. April 17, 1879.]

Where an executive officer makes an order, or issues a notification under the provisions of the Code of Criminal Procedure, it is not within the province of judicial authority to question the propriety or legality of such order or notification until an attempt is made to enforce the exaction of a penalty against a person committing a breach of such order or notification. It then becomes the duty of the judicial authority to consider whether the order is properly made or not.—In the Matter of Surjanarain Dass: Empress v. Surjanarain Dass, I. L. R., 6 Cal. 88. [Jackson and Tottenham, JJ. June 15, 1880.]

A MAGISTRATE directed a landholder "to find a clue" in a case of theft "within fifteen days, and to assist the police." Held that such order was not authorized by sa. ga and 91 of Act X. of 1872 (corresponding with ss. 42 and 43 of Act X. of 1882), and the conviction of such landholder, under ss 187 and 188 of the Penal Code, for disobedience of such order, was not maintainable.—Empress v. Bakshi Ram, I. L. R., 3 Ali. 201. [Pearson, J. Aug. 18, 1880.]

In the absence of evidence that an order under s. 530 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 145 of the new Code of Criminal Procedure (Act X. of 1882), was, in fact, directed to the accused, he cannot legally be convicted under s. 188 of the Penal Code for disobeying such order. Quare.—Whether an order under s. 530 (or s. 145 of the new Code) can be directed to others than the unsuccessful party to the proceedings under the section, or whether such an order could properly be directed to the public at large.—In re Nobokishore Chuckerbutty, 7 C. L. R. 291 [Mitter and Maclean,]]. Sep. 4, 1880.]

S. 188 of the Penal Code applies to orders made by public functionaries for public purposes, and not to an order made in a civil suit between party and party. The proper remedy for disobedience of an order of injunction passed by a Civil Court is committed for contempt.—In the Matter of Chandrakanta De, I. L. R., 6 Cal. 445; 7 C. L. R. 350. [Garth, C.J., and Maclean, J. Nov. 9, 1880.]

In a case of a dispute between rival parties as to the payment of rents by tenants, Magistrate has no power under s. 518 of Act X. of 1872 (corresponding with s. 144 of Act X. of 1882), to make an order that no rents should be collected until such time as the right and title of both parties should have been established by order of a competent Comband a conviction under s. 188 of the Penal Code for disobeying such an order cannot be sustained.—Prosunno Coomar Chatterjee v. Empress, 8 C. L. R. 231. [Mitter and Maclean, J]. Jan. 19, 1881.]

An omission or neglect by a zemindar, when called upon under s. 21 of Reg. XX. of 1817, to nominate some one to fill the office of village-watchman which had become vaccest

s not an offence under either s. 187 or s. 188 of the Penal Code.-IN THE MATTER OF Kali Prosunno Ghose, 7 C. L. R. 575. [Morris and Prinsep, J]. Jan. 19, 1881.]

Where a dispute arises as to the right of the possession of lands and buildings, a Magistrate, if he considers a collision between the parties, and a serious breach of the peace, imminent, may properly proceed under ch. 39, instead of ch. 40, of the Criminal Procedure Code (Act X. of 1872). If the Magistrate had jurisdiction, the proceedings, not being judicial, cannot be revised by the High Court. An order to abstain from interference with a temple and its property is an order to abstain from a " certain act" within the meaning of s. 518 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882).—E. V. RAMANUJA JEEVARSVAMI 2. Y. RAMANUJA JEEVAR, I. L. R., 3 Mad. 354. [Innes and Muttusami Ayyar,]]. Aug. 4, 1881.

On the 7th of June 1881, the Assistant Commissioner of Hylakandi, in Sylhet, passed an order under s. 518 of the Criminal Procedure Code (Act X. of 1872), corresponding with 3. 144 of the new Code of Criminal Procedure (Act X. of 1882), that the manager of acertain tea-garder, should discontinue holding a market on Thursday until further notice. On the 25th August 1881, the Assistant Commissioner reviewed this order, and, having come to the conclusion that he had no power to issue a permanent injunction, struck the case off the file, at the same time referring the matter to the Deputy Commissioner. latter declined to interfere, informing the Assistant Commissioner that he saw no illegality in his order. Thereupon the Assistant Commissioner passed an order, declaring that his order of the 7th of June 1881 remained in full force. On a reference to the High Court made by the Officiating Sessions Judge of Sylhet under s. 297 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 438 of the new Code of Criminal Procedure (Act X. of 1882), held that the Magistrate having, on the 25th of August 1881, set aside his order of the 7th of June 1881, and struck the case off the file, he had no power to revive it without a fresh proceeding.—BRADLY v. JAMESON, I. L. R., 8 Cal. 580. [Cumaingham, and Tottenham, J]. Mar. 6, 1882.]

An order given by an officer superior in rank to an officer in charge of police-stations, i commanding an assembly of five or more persons likely to cause a disturbance of the public peace to disperse, is a lawful order within the meaning of s. 480 of the Code of Criminal Procedure (Act X. of 1872), corresponding with ss. 127 to 132 of the new Code of Criminal Procedure (Act X. of 1882).—EMPRESS v. TUCKER, I. L. R., 7 Bom. 42. [Kemball and Pinhey, JJ. Sep. 28, 1882.]

In affording special protection to persons assembed for religious worship or religious reremonies, the law points to congregational rather than private worship; and it may fairly be required of congregations that they should inform the Magistrate or police at what hours they customarily assemble for worship, in order that the rights of other perright to use the public street for processions, on the plea of the sanctity of their place of worship, or on the plea that worship is carried on therein day and night. The duties of a Magistrate in cases where the public peace is likely to be disturbed by one sect attempting to prevent another from using the public streets for procession discussed. The principles laid down in Muthialu Chitti v. Bapun Saib (I. L. R., 2 Mad. 140) examined, explained, and approved.—Sundram v. Queen, I. L. R., 6 Mad. 203. [Turner, C.J., and Innes and Kindersley, []. Jan. 9, 1883

THE accused was convicted under the Penal Code of disobedience to a general order of the Magistrate, directing the public not to frequent the roads and public places at the village of P between certain hours. Held that the conviction was bad. - In re KOMUL KRISTO BONICK, 12 C. L. R. 231. [Mitter and Field, JJ. Feb. 28, 1883.]

A DISPUTE having arisen between the Mahomedan and Hindu inhabitants of a town as to the right of the latter to carry corpses along a certain public street to the burningground, the Magistrate passed an order, purporting to be under s. 539 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 558 of the new Code of Criminal Procedure (Act X. of 1882), directing that the Hindus should carry corpses by the mearest route to the burning-ground, and not by the street to the use of which for such purposes the Mahomedans objected. Held that the order of the Magistrate was illegal.—In re Narayana, I. L. R., 7 Mad. 49. [Turner, C.J., and Muttusami Ayyar, J. May 26, 1883.

A PERSON attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be false to the District Superintendent of Police. Held that such person had not thereby committed an offence punishable under s. 175 s. 188 of the Penal Code, or the offence of attempting to "cheat" within the meaning of s. 415 of that Code.—EMPRESS v. DWARKA PRASAD, I. L. R., 6 All. 67. [Tyrrell, J. Sep. 25, 1883.]

On the 20th of March 1883, the Municipal Commissioners of Commillah, at a meeting, issued an order under s. 256 of the Bengal Municipal Act of 1876. The accused was tried and convicted before the District Magistrate under s. 188 of the Penal Code, and fined Rs. 100 for having disobeyed that order. The Magistrate who tried and convicted the accused was present as Chairman of the Municipal Commissioners at the meeting of the 29th of March when the order was passed, for disobedience of which the accused was tried and convicted. Held that the conviction was illegal, and must be set aside. Sergeant v. Daleél. R., 2 Q. B. D. 558) cited and followed.—Kharak Chand Pal v. Tarack Chunder Gupta, I. L. R., 10 Cal. 1030. [Prinsep and Macpherson, J]. Aug. 22, 1884]

In May 1883 the District Magistrate of Tipperah held an inquiry as to the possession of certain lands claimed by A and B, and, having found on the evidence taken by him that A was in possession, he passed an order on the 21st of May 1883, declaring that A was entitled to hold possession of the disputed land until evicted in due course of law, and forbidding B and all others to disturb A's possession until such disturbance should be effected in due course of law. Previously to November 1885, B sold an eight-anna share of his interest in the disputed land to C, who, at the time of his purchase, had notice of the order of the 21st of May 1883. In November 1885, B and others went to the disputed lands, and attempted to turn A out of possession by force, and to compel the tenants of the lands to pay tent, and give kabuliyats to B and C. At the time that B and his companions went to the disputed land, the latter were aware of the order of the 21st of May 1883, though none of them was a party to the inquiry then made by the District Magistrate. In December 1885, they were all tried and found guilty of disobedience to an order duly promulgated by a public servant. Held that the conviction was right. Semble. - That a reference by a Magistrate to a police-report, which clearly sets out the probability of a breach of the peace, is a sufficient statement of the reasons for the Magistrate's being satisfied of the existence of a dispute likely to cause a breach of the peace within the meaning of s. 145 of the Code of Criminal Procedure.—GOLUCK CHANDRA PAL v. KALI CHARAN DE, I. L. R., 13 Cal. 175. [Prinsep and Grant,]]. April 30, 1886.]

In 1876 a Magistrate passed an order under s. 518 of Act X. of 1872 (Criminal Procedure Code), directing the Saraogis of Etah to take one of their annual religious processions along a particular route, and at a particular hour. In 1886, in which year there was no fresh promulgation of the order, the Saraogis took their procession along another route, and at a different hour, and for so doing some of them were convicted and sentenced under s. 188 of the Penal Code. Held that the conviction was wrong, the order of 1876 having a temporary operation only. Gopi Mohun Mullick v. Taramoni Chowhrani (1. L. R., 5 Cal. 7) referred to.—Queen-Empress v. Sheodin, I. L. R., 10 All. 115. [Mahmood, J. Nov. 25, 1887.]

A DISTRICT MAGISTRATE, by an order made under s. 144 of the Criminal Procedure Code, after stating that it appeared that one "G C S has recently established a set in the vicinity of K, an old-established hat, held it on the same days, and that, in c sequence of the establishment of the new hat, and the endeavours made to induce or to people to frequent the new hat instead of the old one, a serious breach of the peaceriots are imminent," ordered "that the said G C S and all other persons abstain from ho ing such hat" on those days. The order was duly made and promulgated, but not strice in accordance with s. 134 of the Code, and the orders of Government made therems. Notwithstanding the order, one P C A was found exposing goods for sale as a trade the hat on one of the prohibited days, and he was thereupon charged with disobeying order of the Magistrate, and convicted of an offence under s. 188 of the Penal Code. At that the conviction was bad, as P C A did not come within the description of the pease intended by the order to be prohibited from "holding" the hat, which referred to "holding" as owner or manager, not as a trader. Held also that the terms of s. 134 of Code, and the notification made by Government thereunder as to promulgation and an order, are directory, but an omission to follow strictly such direction, though the an irregularity, does not invalidate the order: where, therefore, it is shown that the or has been brought to the actual knowledge of the person sought to be affected by it, sa

inission does not prevent the case coming within s. 188 of the Penal Code.—IN THE SATTER OF PARBUTTY CHARAN AICH; PARBUTTY CHURN AICH v. QUEEN-EMPRESS, "L. R., 16 Cal. q. [Wilson and Rampini, JJ. Aug. 6, 1888.]

189. Whoever holds out any threat of injury to any public servant, or to Presy. Mag. Threat of injury to a public any person in whom he believes that public servant or Mag. of 1st to be interested, for the purpose of inducing that Uncog. mblic servant to do'any act, or to forbear or delay to do any act, connected Summons. rith the exercise of the public functions of such public servant, shall be punish. Bailable.

d with imprisonment of either description for a term which may extend to two rears, or with fine, or with both.

In a prosecution for an offence under s. 189 of the Penal Code, the witnesses differed is to the exact words used by the prisoner in threatening the public servant, though they igreed as to the general effect of those words. The Magistrate, however, considered that be offence was clearly proved, and convicted the prisoner. The Sessions Judge, on appeal, dirined the conviction, observing that it was immaterial what the words used were, and hat the intention and effect of the words were plain. Held that the Judge was mistaken n regarding it as immaterial what the words used actually were, and that, on the contrary, It was most material that those words should be before the Court to enable it to ascertain whether in fact a threat of injury to the public servant was really made by the accused weun-Empress v. Maheshri Bakhsh Singh, l. L. R., 8 All. 380. [Straight, Offg. C.J. May 22, 1886.]

190. Whoever holds out any threat of injury to any person for the pur-

Ditto.

Threat of injury to induce person to refrain from applyg for protection to public pose of inducing that person to refrain or desist from making a legal application, for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such pro-

lection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

WHERE the exercise of ecclesiastical jurisdiction is plainly ultra vires, or otherwise unsanctioned by the ordinances of a religious society, or where such ordinances controvert the general law, and, in either case, consequences result which the criminal law was intended to restrain, the Criminal Courts are not at liberty to decline jurisdiction. A Roman Catholic complained to a Magistrate that he had been threatened with an illegal senlence of excommunication, and had been excommunicated by the ecclesiastical authorities, with a view to prevent him from asserting his legal rights in defending a civil suit conparaing the property of a church. Held that, under the circumstances, the proper course was for the Magistrate to postpone the trial till the complainant proved in a Civil Court the illegality of the action of the ecclesiastical authorities.—In re DECRUZ, I. L. R., 8 Mad. 140. [Turner, C.], and Brandt, J. Oct. 6 and Dec. 2, 1884.]

CHAPTER XI. S. - Vide In Edi Pho

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

191. Whoever, being legally bound by an oath, or by any express provision of law, to state the truth, or being bound by Civing false evidence. law to make a declaration upon any subject, makes 🌭 any tatement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false

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affective proceeding on statements enterined affective processing to a criminal court suit to the processing the part of the suit of the s

Illustrations.

(a.) A, in support of a just claim which B has against Z for one thousand rupees, talsels swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

- (b.) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and, therefore, gives false evidence.
- (c.) A, knowing the general character of Z's handwritiffg, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is effectly as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.
- (d.) A, being bound by an oath to state the truth, states that he knows that Z was a particular place on a particular day, not knowing anything upon the subject. A give false evidence, whether Z was at that place on the day named or not.
- (e.) A, an interpreter, or translator, gives or certifies as a true interpretation or translation of a statement or document, which he is bound by oath to interpret or translate truly that which is not, and which he does not believe to be, a true interpretation or translation.

 A has given false evidence.

A has given false evidence.

A person false depoing in the name of another form is failed false.

Rulings.

A STATEMENT taken by a Third-class Magistrate under s. 164 of the Code of Crimina Procedure (Act X. of 1882), such Magistrate not having authority to carry on the prominary inquiry in the case, is not evidence in a stage of a judicial proceeding within the meaning of ss. 191 and 193 of the Penal Code, such that, when the statement is controlled afterwards before the Magistrate having jurisdiction, and exercising it in the paralliminary inquiry, it will form a sufficient basis for an alternative charge of giving the evidence in a judicial proceeding.—Queen-Empress v. Bharma, I. L. R., 11 Born. 72 [Sargent, C.J., and West and Nanabhai Haridas, J. Dec. 20, 1886.]

An accused was charged with giving false evidence upon an alternative charge, or statement having been made to a police-officer investigating a case of arson, and the other having been made when he was examined as a witness before the Joint-Magistra when the case was being inquired into. The two statements were contradictory, and evidence was given to show which of them was false. It was not proved that the state ment made to the police-officer was made in answer to questions put by him, and the convidence given at the trial with regard to the inquiry upon which the police-officer engaged was to the effect that an inquiry was being made about the burning of a hous The jury acquitted the accused, and the case was referred to the High Court by the St sions ludge, who disagreed with the verdict of acquittal. Held that the verdict was rigi Before a conviction in such a case can be sustained, it must, having regard to the provi sions of s. 161 of the Criminal Procedure Code, be clearly proved by the evidence that t statement made to the police-officer was a statement in answer to questions put to the cused by the investigating police officer, and in the absence of such evidence, even thou Held, furth the statement were proved to be false, a conviction could not be sustained. that in such a case it is also necessary for the prosecution to establish that the police-co stable was making an investigation under ch. 14 of the Criminal Procedure Code. EMPRESS 7. BAIKANTA BAURI, I. L. R., 16 Cal. 349. [Mitter and Macpherson,]]. Mr 4, 1889.]

Fabricating false evidence.

Fabricating false evidence.

Cumstance, false entry, or false statement, may appear in evidence in a judicity proceeding, or in a proceeding taken by law before a public servant as such, to before an arbitrator, and that such circumstance, false entry, or false statement so appearing in evidence, may cause any person, who, in such proceeding.

form an opinion upon the evidence, to entertain an erroneous opinion toucheany point material to the result of such proceeding, is said "to fabricate evidence."

Illustrations.

- (a.) A puts jewels into a box belonging to Z, with the intention that they may be ad in that box, and that this circumstance may cause Z to be convicted of theft. A stabricated false evidence.
- (b.) A makes a false entry in his shop-book for the purpose of using it as corroboraneridence in a Court of Justice. A has fabricated false evidence.
- (c.) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes the in imitation of Z's handwriting, purporting to be addressed to an accomplice in the criminal conspiracy, and puts the letter in a place which he knows that the officers the police are likely to search. A has fabricated false evidence.

Rulings.

THE term "fabrication" in s. 193 refers to the fabrication of false documentary evince to be used in a suit, so that to convict under this section it is essential to aver and prove that the fabricated documents were intended for that purpose. The illegal contement by act or omission, contemplated by s. 120 of the Code, has reference to the expact of design on the part of third persons to fabricate evidence.—QUEEN V. RAJCOOMAR DERIPEA, I Ind. Jur., O. S., 105. [Trevor and Seton-Karr, JJ. Sep. 27, 1862.]

The accused put in an application, which he verified, before a Judge of a Court of the Canses, praying for a re-hearing of his case under s. 119, Act VIII. of 1859, and all in the was not aware that a suit had been instituted, or a decree given, against him, was not aware that a suit had been instituted, or a decree given, against him, was not guilty of an offence under s. 192 of the Penal Code, nor liable to punishment her s. 24, Act VIII. of 1859. The offence contemplated by the former law requires that is appear in evidence. The latter law does not require that an application under s. 119, tVIII., of 1859, such as the accused made, should be verified. Held by Glover, J., con-REVISION OF PROCEEDINGS IN THE CASE OF HARAN MUNDUL, 10 W. R. 31; 2 B. 2., A. Cr., 1. [Loch and Glover, J]. Aug. 10, 1868.]

WHERE an accused person is charged with fabricating false evidence, it should be wed that such evidence might cause some one "to form an erroneous opinion touching point material to the result;" and it has been held that, in false declarations and cerates, the falsity must be in some material point.—Reg. v. Damodhar Ramchandra Plearnt, 5 Bom. H. C. R. 68. [Newton and Tucker, JJ. Aug. 13, 1868.]

The prisoner, a vakil, presented a vakalatnama in the District Munsif's Court signed the defendant in a civil suit, authorizing the prisoner to appear for the defendant. The lattauna falsely purported to have been executed before the adighari of the village, and hear the sign ature of the adighari. The prisoner was convicted under s. 193 of the Penal de. Held that the case was not brought within the section, and that the prisoner was fitled to his discharge from custody.—In re Keilasum Putter, 5 Mad. H. C. R. 373-bitland, C.J., and Innes, J. July 11, 1870.]

A, INTENDING to procure a forged document purporting to be executed by one Chotak, field & K to accompany A to Gorakhpur, where A said Chotak would be found, and a to draw out a bond for execution by Chotak. In pursuance of this invitation, K, lawing that Chotak would execute the bond, accompanied A to Gorakhpur. A took has been been a stamp-paper the been, and to give his name and description to the stamp-vendor as Chotak. Chetoo spiled with this direction, and the stamp-vendor wrote on the stamp-paper an endorse-to the test of the effect that the purchaser was Chotak, with the description which would apply that person, but, suspecting false personation, arrested Chetoo, and took him to the

Magistrate. On the above facts, the Sessions Judge convicted A of attempt to forsy valuable security, and, under ss. 467 and 511, sentenced him to be rigorously imprised for five years. Held that to constitute the offence of attempt under s. 511, Penal Cat there must be an act done with the intention of committing an offence, and for purpose of committing that offence, and it must be done in attempting the commission the offence. The provisions of s. 511, Penal Code, do not extend to make gunishable attempts acts done in the mere stage of preparation. Although such are doubtless detowards the commission of the offence, they are not done in the attempt to commit to offence within the meaning of the word "attempt" as used in the section.—Queen RAMSARUN CHOWBEY, 4 N.-W. P. 46. [Turner,]. Mar. 13, 1872.]

THE making-up falsely of accounts with the intention of producing them before forest-officer not empowered by law to hold an investigation and take evidence is not fabrication of false evidence within the meaning of s. 193 of the Penal Code.—Res. RAMAJIRAW PUBAJIRAV, 12 Bom. H. C. R. I. [West and Nanabhai Haridas, JJ. Feb. 1875.]

Where the petitioner was convicted of having voluntarily assisted in conceals stolen railway pins in a certain person's house and field with a view to having such ina cent person punished as an offender, held that the Magistrate was right in convicting a punishing the petitioner for the two separate offences of fabricating false evidence fuse in a stage of a judicial proceeding under s. 193 of the Penal Code, and of voluntarial assisting in concealing stolen property under s. 144, Penal Code.—Empress v. Ramens, B., I. L. R., 1 All. 379. [Spankie, J. April 23, 1877.]

M INSTIGATED Z to personate C, and to purchase in C's name certain stamped page in consequence of which the vendor of the stamped paper endorsed C's name on supaper as the purchaser of it. M acted with the intention that such endorsement mix be used against C in a judicial proceeding. Held that the offence of fabricating false of dence had been actually committed, and that M was properly convicted of abotting to commission of such offence. Queen v. Ramsarun Chowbey (4 N.-W. P. 46) distinguish and observed on.—Empress v. Mula, I. L. R., 2 All. 105. [Turner, J. Jan. 24, 1879.]

Where the Magistrate of the district discharged an accused person upon the goat that the fabrication of false evidence by him to be used in his defence on a criminal chap was not an offence falling within s. 192, the Chief Court, on the revision side, set asidet Magistrate's order, and directed him to continue the proceedings, which his order to charging the accused had terminated.—EMPRESS v. JIWAN SINGH, Panj. Rec., No. 10. 1880.

S. 35 of the Evidence Act, which provides "that any entry in an official public box which is duly made by a public servant in the execution of his duty, is of itself a releva fact," does not make the public book evidence to show that a particular entry has a been made in it. S. 466 of the Penal Code is not intended to apply to cases where a public officer, or a person acting for a public officer, whose duty it is to make entries in a public book, knowingly makes a false entry, but to cases where a certificate or other docume is forged by some unauthorized person with a view to make it appear that it was do issued by a public officer. The accused, in order to save an estate from forfeiture, may a false entry of rent received in a public book kept by him for the purpose of information the Collector as to the rents which had been paid into the Collectorate, and as to will estates the rents were in arrear, so that he might take steps to enforce payment, and we convicted by the Sessions Judge of an offence under s. 465 of the Penal Code. * Held., appeal, that the accused ought properly to have been convicted under s. 192 of the Counter provisions of that section not being confined to false evidence to be used in judic proceedings.—In the Matter of Juggun Lall, 7 C. L. R. 356. [Garth, C. J., and Fie J. Nov. 17, 1880.]

Where the date of a document, which would otherwise not have been presented registration within the time, is altered for the purpose of getting it registered, the offic committed is not forgery, where there is nothing to show that it was done "dishoned or fraudulently," within cl. 2, s. 464 of the Penal Code, but fabricating (alse evidence within s. 192.—In re MIR EKRAR ALI, I. L. R., 6 Cal. 482. [Gar C.J., and Field, J. Dec. 3, 1880.]

A POLICE-OFFICER, who had suppressed a document entrusted to him to corward his superior officer, made a false entry in his official diary that the document had been

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marded, intending that, if he were prosecuted under the Police Act for suppressing the cament, such entry might be used as evidence in his behalf that he had so forwarded the ment. Held that, inasmuch as, to constitute the offence of fabricating false evidence, fined in s. 192 of the Penal Code, the evidence fabricated must be admissible evidence, at as, if such police-officer had been prosecuted under the Police Act, the entry in the y would not have been admissible in his behalf, though, contrary to his intention, it that have been used against him, such police-officer was improperly convicted, in respect such entry, of fabricating false evidence punishable under s. 193 of the Penal Code. Itself also that, such police-officer's intention in making such entry being to screen himself tom punishment, he was not punishable under s. 218 of the Code.—Empress v. Gauri MANKAR, I. L. R., 6 All. 42. [Straight, J. July 24, 1883.]

L srought a suit upon a bond, and at the trial sought to support his claim by a letter ticated probably for the purpose of enabling L to get the bond registered. L was con-ted under s. 106 of the Penal Code. Held that, if the letter was fabricated for use before he Registrar, it was no valid objection to the conviction.—LAKSHMAJI v. QUEEN-EMPRESS, Kunde to LL R. 7 Mad. 289. [Kindersley and Hutchins,]]. Jan. 18, 1884.]

153. Whoever intentionally gives false evidence in any stage of a judi- Ct. of Ses., Pusishment for false evi- cial proceeding, or fabricates false evidence for the or Mag. of purpose of being used in any stage of a judicial pro- ist class. rating, shall be punished with imprisonment of either description for a term Uncog.

Thick may extend to seven years, and shall also be liable to fine; and whoever Warrant.

Bailable. sectionally gives or fabricates false evidence in any other case shall be punish. Not comp. with imprisonment of either description for a term which may extend to Sanction. re years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial* is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a probelore a Court of Justice is a stage of judicial proceeding, though that restigation may not take place before a Court of Justice.

Illustration.

A, in an inquiry before a Magistrate for the purpose of ascertaining whether Z ought be committed for trial, makes on oath a statement which he knows to be false. As his inquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice accordto law, and conducted under the authority of a Court of Justice, is a stage a judicial proceeding, though that investigation may not take place before a oun of Justice.

Illustration.

A, in an inquiry before an officer deputed by a Court of Justice to ascertain on the spot boundaries of land, makes on oath a statement which he knows to be false. As this quiry is a stage of a judicial proceeding, A has given false evidence.

Rulings.

BARGAIN TO ABSTAIN FROM PROSECUTION.

A Court cannot take cognizance of a bargain to abstain from the prosecution of a asson who has committed such an offence as that of wilfully giving false evidence. BALKISHIN, 3 N.-W. P. 166. [Morgan, C.J., and Turner, Spankie, and Turnbull, July 1, 1871.]

CHARGE, FORM OF.

THAT you, on or about the day of , before , stated in evidence that "

, in the course of the trial ," which statement you

^{*} Here the words, "or before a Military Court of Request," have been omitted, having ten repealed by the Cantonments Act (XIII. of 1889).

either knew or beli-ved to be false, or did not believe to be true, and thereby committed an offence punishable under s. 193 of the Indian Penal Code, and within my cognization the cognizance of the Court of Session, or High Court].—Crim. Pro. Code (Act X 1882), Sch. V., Form XXXIII.

CHARGE IN THE ALTERNATIVE.

, in the course of the THAT you, on or about the , at day of , before , stated in evidence that " quiry into , in the course of the trial that you, on or about the day of "one of wh , before , stated in evidence that " statements you either knew or believed to be false, or did not believe to be true, and then committed an offence punishable under s 193 of the Indian Penal Code, and within cognizance [or the cognizance of the Court of Session, or High Court].-Crim. Code (Act X. of 1882), Sch. V., Form XXVIII. (II. 4).

CHARGE AGAINST AND TRIAL OF TWO OR MORE PERSONS TO BE SEPARATE

In cases of giving false evidence a separate charge against each prisoner must framed, and a separate trial held of each charge.—Pro., Mar. 15, 1867. 3 Mad. H. C. Ap., 32.

A CONVICTION for false evidence was upheld in a case where the false statement to stop the prosecution of certain Brahmins on a charge of riot or dacoity and must The commitment and trial of several persons on separate charges, each man's statem forming a distinct offence, approved.—QUEEN v. BHAIRO MISSER, 7 W. R. [Norman, J. April I, 1867.]

A PERSON accused of perjury is entitled to have the specific charge made against tried quite independently of a like charge against another person, and the Court of Sesion must find judicially whether all, or, if not all, which of the particular charges of jury, where there is more than one charge, is made out against each prisoner. A courtion for perjury, moreover, should not be sustained on the bare testimony of one with Queen v. Khoab Lall, 9 W. R. 66. [Phear and Hobhouse, J]. May 12, 1868.]

A person accused of giving false evidence in a stage of a judicial proceeding is titled to have the specific charge made against him tried independently of a like class against another person.—Reg. v. Bhavanishankar Haribhai, 5 Bom. H. C. R. [Warden and Gibbs, JJ. July 11, 1868.]

THE commitment and trial together of several persons who are charged with har given false evidence in the same proceedings should be avoided.—QUEEN v. Kurs 11 W. R. 16. [Jackson and Markby, JJ. Mar. 4, 1869.]

On a charge of perjury, each of the accused should be separately charged and tin respect of the alleged perjury.—QUEEN v. RUTTEE RAM, 2 N.-W. P. 21. [Tu and Spankie,]]. Jan. 14, 1870.]

It is wholly incorrect to charge a number of persons jointly with intentionally girfalse evidence under s. 193, Penal Code. A charge under that section should show the statement is which the accused persons or any of them are alleged to have made, it should disclose the exact date on which the offence charged was committed, and Court or officer before whom the false evidence was given.—Queen v. Moharaj Mis 16 W. R. 47; 7 B. L. R., Ap., 66. [Macpherson and Glover, JJ. Sep. 18, 1871.]

Where several persons are accused of having given false evidence in the same ceeding, they should be tried separately. A, S, B, D, and P, were jointly tried, A in res of three receipts for the payments of money, produced by him in evidence in a indicial ceeding, on three charges of falsely using as genuine a forged document, and on three charges of using evidence known to be false; S, B, D, and P, on charges of giving false evid in the same judicial proceeding as to such payments. The Court (Straight, J.), being able to say that the accused persons had not been prejudiced in their defence by ha been improperly tried together, set aside the convictions, and ordered a fresh trial of of the accused separately.—Empress v. Anant Ram, I. L. R., 4 Alk 293. [Straigh Feb. 13, 1882.]

S. 51, ch. 6 of Act I. of 1879, enacts that, "subject to such rules as may be made by Governor-General in Council as to the evidence which the Collector may require, allow shall be made by the Collector for impressed stamps spoiled in the cases hereinafter n

loned," &c. According to a rule made with reference to that section, "the Collector may equire every person claiming a refund under ch. 6 of the said Act, or his duly-authorized. gent, to make an oral deposition on oath," &c. Held, therefore, that the Collector him self is the officer, and no other, to whom power is given by law to make inquiries into applications for allowances for spoiled stamps, to take evidence on oath in reference hereto, and to grant or refuse such applications, and he cannot delegate his authority in he matter. Held, therefore, where a person had applied for a refund under ch. 6 of Act of 1879, and the Collector made over the application for inquiry to a Deputy Collecor, that the Deputy Collector was not entitled to put the witnesses produced by the applicant on their oaths, and consequently, in reference to the statements of such witnesses, o charge under s. 181 or s. 193 of the Penal Code was sustainable. In prosecutions for trying talse exidence under \$ 193 of the Penal Code, the case of each person accused hould be separately inquired into, and, if committed for trial, separately tried. It is holly erroneous to include them in one joint-charge. It is not of itself sufficient to warrant a conviction for giving false evidence that an accused person has made one statement on oath at one time, and a directly contradictory one at another. The charge must not only allege which of such statements is false, but the prosecutor must be prepared with confirmatory evidence, independent of the other contradictory statement, to esablish the falsity of that which is impeached as untrue.* R. v. Jackson (Lewis C. C. 6, 270), Reg. v. Wheatland (8 C. & P. 238), and Rex v. Harris (5 B. & Ald. 926), referred S. 455 of Act X. of 1872 (Criminal Procedure Code) is no authority for framing gainst a person accused of giving false evidence, who has made one statement on oath on one occasion, and a directly contradictory one on oath on another occasion, a charge n the "alternative," that word, as used in that section, meaning that, where the facts which can be proved make it doubtful what particular description of offence an accused person has committed, the charge may be so varied or alternated as to guard against is escaping conviction through technical difficulties. Held, therefore, where three persons were committed for trial jointly, charged with "having on or about the 26th Sepember 1881, or the 18th October 1881, being legally bound upon oath to state the truth, mowingly on those days, regarding the same subject, made contradictory statements upon ath," and thereby committed an offence punishable under s. 193 of the Penal Code, and such persons were jointly tried on such charge, that such charge was bad for being single and joint against the three accused persons, instead of several and specific in regard to each of them; that it was further bad, because it did not distinctly and in terms allege mich of the statements was false; that, assuming a committal upon so faulty a charge should be allowed to stand, the Court of Session should have prepared a fresh charge against ach of the accused persons, spreifically setting forth the statement alleged to be false, and should then have proceeded to try each of them separately; and that, there being no evidence that either of the statements made by two of such persons was false, except that was contradicted by the other, the charge against such persons was not sustainable, there being no sufficient evidence that either of the statements was false. - EMPRESS v. NIAZ ALI, L. R., 5 All. 17. [Stuart, C.J., and Straight, J. July 24, 1882.

Where three persons, of whom one was a pleader, were tried together and convicted inder s. 181 of the Penal Code of having made false statements on solemn affirmation thow the same matter in the course of an inquiry into the conduct of the pleader under the provisions of the Legal Practitioners Act, held that the conviction of the pleader was add, as his statement was improperly taken from him on solemn affirmation. Held also that the trial of the three prisoners together was a grave error of procedure vitiating the trial. Held further that, an inquiry under the Legal Practitioners Act being a judicial proceeding, false statements on solemn affirmation made by the witnesses therein should be charged and tried separately under s. 193 of the Penal Code.—Subba v. Queen, I. L. R., 6 Mad. [Inner and Kernan, I]. Feb. 23, 1883.]

CHARGE, NATURE OF EVIDENCE NECESSARY TO PROVE.

HELD by the majority of the Court (Campbell, J., dissenting) that the evidence of one witness uncorroborated is not legally sufficient for a conviction of perjury.—QUEEN v. LAL CHAND COWRAH CHOWKEEDAR, 5 W. R. 23; 1 Ind. Jur., N. S., 83. [Peacock, C.J., and Bayley, Norman, Pundit, and Campbell, JJ. Feb. 7, 1866.]

Overruled by Empress v. Ghulet, I. L. R., 7 All. 44, infra, under the heading—"Contradictory Statements—Alternative Charge."

In a case of giving false evidence, the strictest and most accurate proof is necessary, and the testimony of a single witness unsupported by corroborative evidence is insufficient for a conviction.—QUEEN 9. MOHIMA CHUNDER CHUCKERBUTTY, 5 W. R. 77. [Seton-Karr and Macpherson, J]. May 7, 1866.]

COMPARISON of signatures is one kind of corroboration which should justify conviction on the testimony of a single witness in a case of false evidence.—Queen v. Barro-Ree Chowbey, 5 W. R. 98. [Seton-Karr, J. June 5, 1866.]

Unsatisfactory conviction for perjury, where the evidence was balanced as to numbers, and where the story for the prosecution was improbable, reversed.—QUEEN v. Poosa Ram, 6 W. R. 11. [Jackson and Markby, J]. June 25, 1866.]

In a case of false evidence, it is necessary to prove the deposition alleged to contain the false statement.—QUEEN v. BHAKOAS TUTTUM, 7 W. R. 13. [Norman, J. Jan. 14, 1867.]

A PRISONER's inability to say where his son was on the 4th Pous is no evidence on which to direct a jury to convict him of false evidence for saying that on the day previous (3rd Pous) his son was ill at home.—QUEEN v. SHEIKH TUFANI, 8 W. R. 26. [Jackson and Hobhouse, JJ. June 24, 1867.]

It is essential to a charge under s. 193 of the Penal Code that the prosecution should make out that there was, on the day stated in the charge, a judicial proceeding pending, and that the prisoner, in the course of that proceeding, made the statement alleged to be false. The particular stage of the proceeding should be mentioned in the charge. Evidence should be given that the accused really made the statement which he is charged to have made. The knowledge by the Sessions Judge of the handwriting of the presiding officer of the Court in which the statement was made is not legal evidence of such statement having been made.—QUEEN v. FUTTICK alias FUTTRALI BISWAS, 10 W. R. 37; 1 B. L. R., A. Cr., 13. [Phear and Hobhouse, J]. Sep. 10, 1868.]

THE true rule in a case of giving false evidence is that no man can be convicted of such offence except on proof of facts, which, if accepted as true, show, not merely that it is incredible, but that it is impossible that the statements of the party accused made on oath can be true. If the inference from the facts proved falls short of this, there is nothing on which a conviction can stand, because, assuming all that is proved to be true, it is still possible that no crime was committed.—Queen v. Ahmed Ally, 11 W. R. 25. [Norman and Jackson, JJ. April 5, 1869.]

In the case of giving false evidence under s. 193 of the Penal Code, the statement which the accused is charged with having made before the Magistrate should be clearly proved to have been made by him. The procedure in the case of a charge under this section pointed out.—QUBEN v. SIDDHOO, 13 W. R. 56. [Loch and Hobhouse, J]. April 9, 1870.]

THE evidence of one witness in cases of perjury is sufficient to establish the factum of the statement which is charged as being false. The measure of punishment is a matter entirely in the discretion of the Court of Session.—QUEEN v. ISSEN CHUNDER GHOSE PATTRI, 14 W. R. 53. [Jackson and Mitter, J]. Sep. 12, 1870.] But see rulings, supra.

To establish the offence of giving false evidence, direct proof of the falsity of the statement, on which the perjury is assigned is essential. But, as legitimate evidence for the purpose, the law makes no distinction between the testimony of a witness directly falsifying such statement, and the contradictory statement of the person charged, although not made on oath. Such a statement, when satisfactorily proved, is quite as good evidence in proof of the charge as the criminatory statement of a person charged with any other offence, and on precisely the same ground—that it is an admission of the accused person inconsistent with his innocence. As to the weight to be given to contradictory statements, the sound rule is that a charge of perjury is not maintainable upon proof of one such statement not on oath, or more than one if proved by a single witness only, unless supported by confirmatory evidence tending to show the falsity of the statement in the charge. With respect to the kind or amount of confirmatory proof required, it must be considered in each case whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony.—Reg. v. Ross, 6 Mad. H. C. R. 342. [Scotland, C.J., and Innes, J. Aug. 4, 1871.]

It is a mistaken view of the law to suppose that prisoners in appeal ought to have the benefit of any doubt with reference to any portion of the evidence. The doubt shown



roust Le of the strongest kind before the Appellate Court should be justified in interfering.
—QUEEN v. Ramlochun Singh, 18 W. R. 15. [Kemp and Glover, J]. June 11, 1872.]

In a case of giving false evidence, the English record written by the Magistrate was put in to prove what the accused had stated before him. The document was not interpreted to the accused in the language in which it was given, or which he understood; nor was it read over in accordance with the requirements of s. 339, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 360, new Code of Criminal Procedure (Act X. of 1882), in the presence of the person then accused. Held that the English record of the Magistrate was not legal evidence under the Evidence Act (I. of 1872), s. 91, of what the prisoner said before the Magistrate. Charges of perjury ought to be based strictly upon the exact words which are used by the person who is charged; and no evidence which does not profess to give those exact words can alone be a safe foundation for a conviction.

—QUEEN v. MUNGUL DAS, 23 W. R. 28. [Phear and Morris, J]. Jan. 28, 1875.]

In a prosecution for intentionally giving false evidence in a judicial proceeding under the Penal Code, s. 193, it is for the prosecution to show clearly that the prisoner's statements were false.—Queen v. Sarjan Miya, 25 W. R. 23. [Glover and McDonell JJ. Feb. 28, 1876.]

Where the accused was charged under s. 193 of the Penal Code with having given false evidence, in that he denied having made certain statements, which he was alleged to have made to the Inspector of Police, that officer was examined, and merely put in two documents containing the statements alleged as the records of what had taken place. Held that, these documents being inadmissible in evidence under s. 119 of the Code of Criminal Procedure (Act X. of 1872), corresponding with ss. 161 and 162 of the new Code of Criminal Procedure (Act X. of 1882), evidence ought to have been given as to what was actually stated by the accused to the Inspector of Police.—In the Matter of Sheikh Dabu, 6 C. L. R. 47. [Tottenham and Maclean, J]. Feb. 20, 1880.]

FAILURE to comply with the provisions of ss. 182 and 183, Act X. of 1877 (Civil Procedure Code), in a judicial proceeding, is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition; and, under s. 91 of Act I. of 1872 (Evidence Act), no other evidence of such deposition is admissible.—In the Matter of Mayadeb Gossami: Empress v. Mayadeb Gossami, I. L. R., 6 Cal. 762; 8 C. L. R. 292. [Cunningham and Maclean, JJ. Feb. 22, 1881.]

NEITHER the words, "shall answer all questions," in s. 118 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 161 of the new Code of Criminal Procedure (Act X. of 1882), nor the words, "shall be bound to answer all questions," in s. 119 of the same Code (corresponding with s. 161 of the new Code), constitute "an express provision of the law to state the truth" within the meaning of s. 191 of the Penal Code. Ss. 118 and 119 are merely intended to oblige persons to give such information as they can to the police in answer to the questions which may be put to them, and they impose no legal obligation on those persons to speak the truth.—Empress v. Kasim Khan, and Empress v. Mussamut Dahia, I. L. R., 7 Cal. 121; 8 C. L. R. 300. [Garth, C.J., and Pontifex, Morris, Mitter, and McDonell, JJ. April 13, 1881.] But see the following ruling:—

S. 161 of the Code of Criminal Procedure (Act X. of 1882) makes it obligatory on a person examined in the course of a police-investigation under ch. 14 to answer truly all questions.put to him (other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture); and such person, if he knowingly answers falsely, commits the offence of giving false evidence in a stage of judicial proceeding under s. 193 of the Penal Code.—Queen-Empress v. Parshram Raysing, I. L.R., 8 Bom 216. [Pinhey and Scott, J]. Nov. 29, 1883.]

CHARGE, PARTICULARS TO BE SET OUT IN.,

THOUGH a charge does not distinctly specify the false statement on which the evidence of perjury is attempted to be established, the omission is not material if the accused has not been prejudiced thereby —QUEEN v. BHUTTOO LALLJEE, 2 W. R. 51. [Jackson, J. Mar. 23, 1865.]

A CHARGE of giving false evidence should specify the false evidence which the prisoners are supposed to have given.—Queen v. Fazul Merah, 5 W. R. 71. [Norman and Campbell, JJ. April 17, 1866.]

In charges of false evidence under \$. 193, Penal Code, the charge should specifically state what words or expressions the accused is charged with having uttered, and in what respect they are supposed to be false.—In the Matter of Dowlut Munsher, 8 W. R. 95. [Kemp and Seton-Karr, JJ. Dec. 14, 1867.]

In framing a charge for giving false evidence under s. 193 of the Penal Code, the charge should be precise, and where the accused is charged with giving false evidence of three different occasions, each occasion should form the subject of a distinct head in the charge. Amendments in a charge ought to be made formally, and should appear on the face of the record.—Queen v. Feoddar Roy, 9 W. R. 14. [Seton-Karr and Macpherson J]. Feb. 8, 1868.]

In a case of giving false evidence, the charge should show the particular matter in respect of which the accused is put on his trial; and only so much of the prisoner's state ment ought to be set out as is necessary in order to show the particular false statements relied on by the prosecution.—Quren v. Soonder Mohooree, 9 W. R. 25. [Macpher son and Jackson, JJ. Mar. 2, 1868.]

CHARGES of perjury should contain a distinct assertion with regard to each statement intended to be characterized as perjury, that it was made, that it is untrue in fact, and that the accused knew it to be so when he made it; and the investigation of the Courshould be directed to each of those points singly. It does not follow that all contradictions on oath by opposing witnesses necessarily involve perjury, nor is the making of document without authority always forgery.—Quben v. Kalichurn Lahooree, 9 W. 254. [Kemp and Phear,]]. April 3, 1868.]

In a case under s. 193, as it is essential that the charge should show, not only the judicial proceeding in which the prisoner is accused of having given false evidence, but the particular stage of the proceeding at which the evidence was given, the proper way to prove that judicial proceeding took place is to produce the record thereof.—QUEEN v. FUTTICS *alias FUTTEAH BISWAS, 10 W. R. 37; I B. L. R., A. Cr., 13. [Phear and Hobhouse, J. Sep. 10, 1868.]

A CHARGE under s. 193 should specify the judicial proceeding in a stage of which the alleged false evidence was given, and should contain the exact words as definitely and specifically as possible which constitute the false evidence.—Mewa Singh v. Crows Panj. Rec., No. 36 of 1869.

A PERSON who is called upon to answer to a charge of giving false evidence should know exactly what is the false evidence imputed to him. A charge, "that he, on or about the 15th April 1871, gave false evidence," is not sufficiently specific. Although the vest fication of plaints containing false statements is punishable according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence, still it is not quite the same thing as giving false evidence. Three separate offence should not be lumped together in a single charge, but each offence should form a separate head of charge, with reference to which there should be a distinct finding and a distint sentence.—Queen v. Sheo Churun, 3 N.-W. P. 314. [Pearson, J. Sep. 4, 1871.]

A MAGISTRATE, making a commitment for giving false evidence, must set out the precise words, recorded as used by the accused containing the statement which he undertake to prove false, and not state the effect on those words. In the High Court it is the practic to set out in the charge the substance and, as nearly as possible, the words of the state ment alleged to be false. Where a charge did not distinctly set out the statement alleged to be false, but it appeared that the accused perfectly understood what was the alleged statement, and was not prejudiced in his defence, the Court refused to interfere.—Queen a Boodhun Ahir, 17 W. R. 32. [Loch and Ainslie, J]. Feb. 12, 1872.]

WHEN certain charges did not set out the exact statements made by witnesses which the Magistrate intended to prove false, but the defect was not such as to mislead the accused, the High Court declined to interfere under s. 426 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 466 of the new Code of Criminal Procedur (Act X. of 1882), but warned the Magistrate to be careful for the future.—QUEEN v. Ashuya Thakoor, 17 W. R. 33. [Loch and Ainslie, JJ. Feb. 24, 1872.]

Charges of perjury ought to be based strictly upon the exact words which are used by the person who is charged; and no evidence which does not profess to give those exact words can alone be a safe foundation for a conviction.—QUEEN v. MUNGAL DAS, 23 W. R. 28. [Phear and Morris, JJ. Jan. 28, 1875.]

S. 455 of Act X. of 1872 (corresponding with s. 236 of Act X. of 1882) applies to cases in which, not the facts are doubtful, but the application of the law to the facts is doubtful, ladgment in the alternative cannot be passed in cases in which it is doubtful whether the accused person is guilty of any one of the several offences charged, but where it is doubtful of which of those offences he is guilty. The accused persons were committed for trial ander an erroneous and untenable alternative charge under s. 193 of the Penal Code. The Court of Session amended the charge under s. 193, and added charges under ss. 201 and 193. It was doubtful whether the amendment and addition were not likely to prejudice the accused in their defence. The alleged false evidence, and not its assumed substance and purport should be set forth in a charge under s. 193.—QUEEN v. JAMURHA, 7 N.-W. P. 137. [Pearson, J. 1 eb. 4, 1875.]

CHARGE, WHERE THERE ARE SEVERAL FALSE STATEMENTS.

In framing a charge for giving false evidence under s. 193 of the Penal Code, the charge should be precise, and, where the accused is charged with giving false evidence on three different occasions, each occasion should form the subject of a distinct head in the charge. Amendments in a charge ought to be made formally, and should appear on the face of the record.—QUEEN v. FEOJDAR ROY, 9 W. R. 14. [Seton-Karr and Macpherson,]. Feb. 8, 1868.]

THE making of any number of false statements in the same deposition is one aggregate case of giving false evidence. Charges of false evidence cannot be multiplied according to the number of false statements contained in the depositions.—Pro., May 1, 1871; 5 Mad. H. C. R., Ap., 27.

CIVIL COURT, FALSE EVIDENCE BEFORE.

WHEN a Civil Court directs that criminal proceedings be taken against a party to a suit before it for perjury or forgery, the High Court has no power, on an appeal being preferred against the decision of that Court, to direct that such proceedings be stayed until the appeal shall have been heard and determined.—IN THE MATTER OF RAM PRASAD HAZRA, B. L. R., Sup. Vol. 426. [Peacock, C.J., and Bayley, Seton-Karr, Pundit, and Macpherson, JJ. Feb. 12, 1866.]

THE discretion vested in a Civil Court under s. 169, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 195, new Code of Criminal Procedure (Act X. of 1882), of sanctioning a criminal charge of perjury, is one that should be most carefully exercised. Remarks on the present case, in which the discretion was improperly exercised.—QUEEN v. POOSA RAM, 6 W. R. 11. [Jackson and Markby, JJ. June 25, 1866.]

THE failure of the Civil Court in a case of perjury to make a memorandum of the evidence of the accused when examined before it does not vitiate the depositions, if the evidence itself was duly recorded in the language in which it was delivered in such Court.—by the Case of Beharee Lal Bose, 9 W. R. 69. [Loch and Kemp, JJ. May 16, 1868.]

WHERE a Civil Court sends an offence under s. 193 of the Penal Code to a Magistrate for investigation and commitment, if necessary, the Magistrate cannot return the case to the Civil Court, nor can the Civil Court. after it has sent a case to the Magistrate, commit it to the Sessions. The Magistrate should himself proceed with the case, and take evidence therein.—Queen v. Jan Mahomed. 12 W. R. 41; 3 B. L. R., A. Cr., 47. [Kemp and Markby. JJ. Aug. 3, 1869.]

A CIVIL COURT has no power to order the commitment of persons for offences under ss. 471, 455, and 193 of the Penal Code without holding the preliminary inquiry required by s. 474 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 478 of the new Code of Criminal Procedure (Act X. of 1882).—QUEEN v. RUNGATOONEE, 22 W.R. 52. [Markby and Mitter, JJ. Aug. 5, 1874.]

ALTHOUGH s. 16 of Act XXIII. of 1861 gives Civil Courts powers similar to those conferred on Civil and Criminal Courts alike by s. 471 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 476 of the new Code of Criminal Procedure (Act X. of 1882), the whole law as to the procedure in cases within those sections is now embodied in s. 471 of the Criminal Procedure Code. In a suit brought to recover possession of certain property, the Judge decided one of the issues raised in the plaintiff's favour; but, on the important issue, as to whether the plaintiff ever had possession, he found for the

defendant. The plaintiff was not examined but on the issue as to possession he called two witnesses. The Judge disbelieved their statements, and considering that the plaintiff had Tailed to prove his case, he gave judgment for the defendant without requiring him to give evidence on that issue. In the concluding paragraph of his judgment, the judge directed the depositions of the two witnesses above referred to, together with the English memoranda of their evidence, to be sent to the Magistrate, with a view to his inquiring whether or not they had voluntarily given false evidence in a judicial proceeding; and he further directed the Magistrate to inquire whether or not the plaintiff had abetted the offence of giving false evidence, on the ground that, as the witnesses were the plaintiff's servants, he must personally have influenced them, and also to inquire whether the plaint which the plaintiff had attested contained averments which he knew to be false. On a motion to quash this order. held that, under s. 471 of the Criminal Procedure Code, the Judge has no power to send a case to a Magistrate, except when, after having made such preliminary inquiry as may be necessary, he is of opinion that there is sufficient a (i. e., ground of a nature higher than mere surmise or suspicion) for directing judical inquiry into the matter of a specific charge, and that the Judge is bound to indicate the particular statements or averments in respect of which he considers that there is ground for a charge into which the Magistrate ought to inquire, and that the order was bad, because the Judge had made no preliminary inquiry, and because it was too vague and general in its character.—In the Matter of Baijoo Lall: Beg v. Baijoo Lall, I. L. R., 1 Cal. 450. [Macpherson and Morris, JJ. Aug. 23, 1876.]

The power of a Civil Court to commit a case to the Court of Session, after completing the preliminary inquiry, is given by s. 474 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 478 of the new Code of Criminal Procedure (Act X. of 1882), and is restricted to the class of cases provided in that section. vis., where offences exclusively triable by a Court of Session are committed before the Civil Court. S. 471 of the Code of 1872 (or s. 476 of the Code of 1882) deals with a more extended class of cases, vis., all those mentioned in ss. 467., 463. and 469 of the Code of 1872 (corresponding with s. 195 of the Code of 1882) in which, not merely a Civil Court, but any Court, Civil or Criminal, and whether possessing or not possessing the power to commit to the Court of Session, is of opinion that there is sufficient ground for holding an inquiry; and it enacts the procedure to be followed by the Court, which may elect to adopt one of two courses, that is to say, it may either commit a case to the Court of Session, if and where it has the power to do so, or, if it has not that power. or is not disposed to exercise it, it may send the case to a Magistrate having power to try, or commit for trial, the accused person for the offence charged.—IMPERATRIX v. POPAT NATHU, I. L. R., 4 Bom. 287. [Pinbey and Melvill, J]. Dec. 17, 1879.]

An order made under s. 471 of Act X. of 1872 (corresponding with s. 476 of Act X. of 1882), sending a case for inquiry to a Magistrate, is not necessarily bad, because the Court did not make a preliminary inquiry before making such order. The law requires only such preliminary inquiry "as may be necessary." Held, therefore, where a Munsif, being of opinion that both the parties to a suit tried by him had given false evidence therein on certain points. sent the case for inquiry to the Magistrate under s. 471 of Act X. of 1872, with a proceeding embodying the facts of the case, and charging the parties respectively with giving false evidence on such points, and there was nothing to show that any inquiry that the Munsif could have made was necessary, or would have put the Magistrate into a better position for dealing with the case than he was in, that the Munsif's proceedings were not bad, because he did not hold a preliminary inquiry.—Empress v. Juala Prasad, I. L. R., 5 All. 62. [Tyrrell, J. July 29. 1882.]

COMMITMENT.

A MAGISTRATE, to whom the case of a person charged with giving false evidence in a judicial proceeding is transferred for investigation, cannot commit to the sessions without himself recording evidence, and examining the complainant and his witnesses in the presence of the accused.—QUEEN v. RAMDHUN SINGH, 11 W. R. 22. [Jackson and Markby, JJ. Mar, 17, 1869.]

THE Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court.

—QUEEN v. HARDYAL, 3 B. L. R., A. Cr., 35. [Norman and Jackson, JJ. July 13, 1869.]

A COURT OF SESSION is competent and ought to proceed to the trial of a prisoner who is brought before it upon a charge exhibited by a Magistrate, who is authorized to make

2 commitment, notwithstanding any irregularity or defect of form in recording the complaint.—Revision in the Case of Narain, 14 W. R. 34; 5 B. L. R. 660. [Couch, C.J., and Bayley, Kemp, Jackson, and Phear, JJ. Aug. 23, 1870.] Overrules Queen v. Hehim Chandro Chuckerbutty, 3 B. L. R., A. Cr., 67.

THE Criminal Procedure Code does not authorize the Sessions Judge to quash a commitment on the ground of illegality. If the Sessions Judge is of opinion that the order of commitment should be annulled as illegal, he should move the High Court to annul the same.—QUEEN v. MATA DYAL, 4 N.-W. P. 6. [Pearson, J.]am. 13, 1872.]

GIVING false evidence is "an offence committed in contempt of the authority" of a Court within the meaning of s. 473 of Act X. of 1872 (corresponding with s. 487 of Act X. of 1882). Reg. v. Naranbeg (10 Bom. H. C. R., 73) and the ruling in 7 Mad. H. C. R., Ap., 17, followed. Queen v. Kultaran Singh (I. L. R., 1 All. 120) and Queen v. Yagut Mull (Ibid., 162) dissented from. Where the accused was, by a Magistrate, First Class, committed for trial by the Sessions Court on a charge of having given false evidence in a judicial proceeding before the Sessions Judge, there being no Assistant Sessions Judge or Johnt Sessions Judge, held that the commitment could not be quashed, there being no error in law, and the case must, therefore, be transferred for trial to another Court of Session. In such a case as the above, the better course would be for the Magistrate to try the case himself, and, if he is incompetent to pass a sufficient sentence, for the Sessions Judge to refer the case to the High Court for enhancement of sentence.—Reg. v. Gajikom Ranu, I. L. R., 1 Bom. 311. [Melvill and Nanabhai Haridas,]]. Aug. 24, 1876.]

L MADE a complaint against S by petition, in which he only charged S of having committed offences punishable under ss. 193 and 218 of the Penal Code, but in which he also accused S of acts which, if the accusation had been true, would have amounted to an offence punishable under s. 466 of that Code with seven years' imprisonment. The Magistake inquired into the charges against S under ss. 193 and 218 of the Penal Code, and directed his discharge. L then applied to the Court of Session to direct S to be committed for trial on the ground that he had been improperly discharged, which the Court of Session cid, and S was committed for trial charged under s. 218 of the Code, and was acquitted by the Court of Session. The Court of Session then, under s. 472 of Act X. of 1882, charged L with offences punishable under ss. 193, 195, 211, and 211 and 109 of the Penal Code, and committed him for trial. Held that such commitment was not bad by reason that an offence under s. 193 of the Penal Code is not exclusively triable by a Court of Session. Held also per Stuart, C.J. (Spankie, J., doubting).—That the High Court is competent, in the exercise of its power of revision under s. 297 of Act X. of 1872 (corresponding with s. 439 of Act X. of 1882), to quash a commitment made by a Court of Session under the provisions of s. 472 of that Act (or s. 477 of the new Act). Held also per Spankie, J.—That the Court of Session was competent, notwithstanding that L had only charged S with offences under ss. 193 and 218 of the Penal Code, to charge L with offences under ss. 195 and 211, if such offences had come under its cognizance.—Empress v. Lachman Singh, I. L. R., 2 All. 398. [Stuart, C.J., and Spankie, J. June 11, 1879.]

COMPENSATION.

A MAGISTRATE having jurisdiction is authorized by law in making an order under s. 270. Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 250 of the new Code of Criminal Procedure (Act X. of 1882), directing the complainant to make amends to the accused, notwithstanding that the complainant is to take his trial for perjury.—Queen v. Roopun Rae, 15 W. R. 9; 6 B. L. R. 296. [Jackson and Ainslie, JJ. Jan. 26, 1871.]

CONTRADICTORY STATEMENTS-ALTERNATIVE CHARGE.

It being impossible to decide which of the prisoners' two statements was false, and which true, the prisoners were convicted on the alternative charge.—QUEEN v. NARAIN Doss, 1 W. R. 15. [Glover, J. Sep. 20, 1864.]

Discussion as to the propriety of a conviction on a charge of false evidence, one of the statements charged having been made to the police under compulsion.—QUEEN v. NACENA OURUT, 3 W. R. 6. [Campbell, Jackson, and Glover, JJ. May 3, 1865.]

THE prisoner, who, as a witness in a former case, had made one statement before the Magistrate, and a contrary one before the Sessions Judge, was tried and convicted of having either given false evidence before the Judge, or given false evidence before the Magistrate.



CHAR. XI.

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Held (Norman and Campbell, JJ., doubting) that the conviction was right. Held also (Campbell, J., differing) that the evidence taken before the Judge was admissible on the charge of having given false evidence before the Magistrate.—QUEEN v. MUSSAMAT ZAMIRAN, B. L. R., Sup. Vol., 521; 6 W. R. 65. [Peacock, C.J., and Norman, Kemp, Seton-Karr, and Campbell, JJ. Aug. 31, 1866.] Followed by Empress v. Ghulet, I. L. R. 7 All. 44, infra, p. 181.

A CONVICTION on a charge of giving false evidence was set aside, the alleged conflicting statements having been made after a lapse of four years, and there being no proof of deliberate intention to give false evidence, which was held to be the gist of the offence.—QUEEN v. NAGBUNSEE LALL, 6 W. R. 89. [Kemp and Markby, JJ. Dec. 10, 1866.]

Where a person makes one statement before the Magistrate, and a directly different statement before the Civil Court, his commitment on an alternative charge after the consent of the Civil Court has been obtained under s. 169 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882), is strictly legal.—QUBEN v. OOTTUR NARAIN SINGH, 8 W. R. 79. [Glover and Hobhouse, JJ. Nov. 4, 1867.]

In a case of giving false evidence, the charge should show the particular matter in respect of which the accused is put upon his trial; and only so much of the prisoner's statements ought to be set out as is necessary in order to show the particular false statements relied on by the prosecution. The mere fact that a person has made a statement which contradicts a previous statement is not itself necessarily sufficient to bring him within s. 193.

Penal Code. The circumstances under which, and the intention with which, the particular statement relied on by the prosecution is made, must, in each case, be considered before it can be held that the offence has been committed.—Queen v. Soonder Mohooree, 9 W. R. 25. [Macpherson and Jackson, JJ. Mar. 2, 1868.]

BEFORE an accused person can be convicted of giving false evidence, it must be proved • that he made the statements which are the basis of the charge, and, further, that he made them with the necessary criminal intention. The mere fact that a man has made contradictory statements does not necessarily prove that he has committed an offence under s. 193. The Court must be satisfied as to the intention with which the statements were made-QUEEN v. DENONATH BUZZAR, 9 W. R. 52. [Macpherson and Glover, JJ., Mar. 30, 1868.]

It does not follow that all contradictions on oath by opposing witnesses necessarily involve perjury.—Queen v. Kalichurn Lahooree, 9 W. R. 54. [Kemp and Phear, II. April 3, 1868.

Proof of contradictory statements on oath or solemn affirmation, without evidence as to which of them is false, is sufficient to justify a conviction, upon an alternative finding of the offence of giving false evidence, under s. 72 of the Penal Code and ss. 242, 381, and 382 of the Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 367 of the new Code of Criminal Procedure (Act X. of 1882). The English Law upon the subject stated.—In re Palany Chetty, 4 Mad. H. C. R. 51. [Scotland, C.J., and Collett, J. May 18, 1868.] Followed by Empress v. Ghulet, I. L. R., 7 All. 44, infra, p. 181.

Where a person makes two contradictory statements in the course of a judicial proceeding, he may be tried and convicted of giving false evidence on a single charge, i there is evidence to show which statement is false.—Reg. v. Ganoji bin Pandji, 5 Bom H. C. R. 49. [Couch, C.J., and Newton, J. June 25, 1868.]

An alternative finding under s. 381 of the Code of Criminal Procedure (Act XXV of 1861), corresponding with s. 367 of the new Code of Criminal Procedure (Act X. of 1882), should not be resorted to until both the committing officer and the Sessions Judge are satisfied that no reliable evidence is procurable in support of one or other of the charges; and such a finding cannot be based in a case of giving false evidence upon two statements which are not absolutely contradictory the one of the other, nor when in one of them the accused gives only hearsay evidence. Every presumption in favour of the possible reconciliation of the statements must be made.—Queen v. Bedoo Noshyo, 12 W. R. 11; 13 B. L. R. 325n. [Norman and Hobhouse, JJ. June 24, 1869.]

S. 242, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 367. new Code of Criminal Procedure (Act X. of 1882), points out how the charge is to be drawn up in a case in which it is doubtful which of two statements made by the accused is false. QUEEN T. KALA KHAN, 12 W. R. 23. [Jackson and Mitter, JJ. July 5, 1869.]

In the trial of a prisoner for murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas before the Magistrate he had stated, as was the fact, that the prisoner had committed the murder. Held that such witness was guilty under s. 193, and not under s. 194, of the Penal Code, as he.did not know that he would-cause a conviction for murder.—QUEEN v. HARDYAL, 3 B. L. R., A. Cr., 35, [Norman and Jackson, JJ. July 13, 1869.]

Where a person is charged with making two contradictory statements, it must be proved by direct evidence that both statements were made, and there must be an inquiry as to which statement is untrue, and whether the accused wilfully made the statement which is supposed to be false, knowing it to be false.—Queen v. Moti Khowa, 12 W. R. 31; 3 B. L. R., A. Cr., 36. [Norman and Jackson, J]. July 13, 1860.] But see *Empress* v. Ghulet, I. L. R., 7 All. 44, irfra, p. 181, and the cases therein cited.

In a case of giving false evidence by making contradictory statements, one of which the accused knew to be false, it is not sufficient to support the falseness of either story by the other deposition, but there must be *independent* evidence of the falseness of either story.—QUEEN v. KOLA, 12 W. R. 66; 4 B. L. R., A. Cr., 4. [Norman and Kemp, J]. Oct. 8, 1869.] But see Empress v. Ghulet, I. L. R., 7 All. 44, infra, p. 181, and the cases therein cited.

In a case of giving false evidence by making contradictory statements, a Court of Session cannot, without making further inquiry, commit a person for trial under s. 172 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 477 of the new Code of Criminal Procedure (Act X. of 1882), when both contradictory statements are not made before it. By the words, "under its own cognizance," in that section it is meant to pro-vide for a case where it is brought under the notice of the Court of Session in the course of a judicial proceeding that the crime with which the party is to be charged has been committed by him. The following important observations were made by Norman, J., in the case: " It is one thing to show that a particular statement made by a witness is inaccurate or even false, and another to say that the witness has intentionally given false evidence.

To overlook the difference between the making of contradictory statements. by a witness under examination, and the giving of intentional false evidence, is to shut one's eyes to the infirmities of human memory, to fail to understand how slow are the intellects, and how imperfect the powers of expression of uneducated peasants. firmly believe that, if a witness could be convicted upon alternative charges of giving false evidence on contradictions of such a character as those supposed to exist in the present case, no native witness of the lower classes subjected to cross-examination by an adroit and perhaps not over-scrupulous advocate would be safe."—QUEEN v. NOMAL, 12 W. R. 69; 4 B. L. R., A. Cr., 9. [Norman and Kemp, JJ. Nov. 26, 1869.]

To establish the offence of giving false evidence, direct proof of the falsity of the statement on which the perjury is assigned is essential. But, as legitimate evidence for the purpose, the law makes no distinction between the testimony of a witness directly falsifying such statement, and the contradictory statement of the person charged, although not made on oath. Such a statement, when satisfactorily proved, is quite as good evidence in proof of the charge as the criminatory statement of a person charged with any other offence, and on precisely the same ground—that it is an admission of the accused person inconsistent with his innocence. As to the weight to be given to contradictory statements, the sound rule is that a charge of perjury is not maintainable upon proof of one such statement, not on oath, or more than one if proved by a single witness only, unless supported by confirmatory evidence tending to show the falsity of the statement in the charge. With respect to the kind or amount of confirmatory proof required, it must be considered in each case whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony.—Reg. v. Ross, 6 Mad. H. C. R. 342. [Scotland, C.J., and Innes. J. Aug. 4, 1871.]

WHERE a prisoner is charged separately for having given false evidence with regard to two statements directly opposed to each other, a plea of guilty on one of the charges, does not involve an acquittal on the other. A Sessions Court is bound to take evidence, and try a charge, pefore it can acquit a prisoner of that charge.—QUEEN v. HOSSAIN ALI, 8 B. L. R., Ap., 25. [Ainslie, J. Aug. 15, 1871.]

HELD by the majority (Jackson, J., dissenting) that a charge, framed on the model given in ch. 3 of the Code of Criminal Procedure (Act X. of 1872), charging the accused upon two charges with having made contradictory statements in the course of judicial

proceedings under s. 193. Penal Code, is a good charge, and that (Phear and Jackson J., dissenting) the Court or jury, if convicting, need not, by direct evidence, find which of the two statements is false; all that is necessary being that the Court or jury should find that the allegations made in the charge are proved.—QUEEN w. MAHOMEE HOOMANDEN SMAH, 21 W. R. 72; 13 B. L. R., F. B., 324. [Couch, C.J., and Kemp, Jackson, Phens, Markby, Glover, Ainslie, Pontifex, Birch, and Morris, J.]. April 11, 1874.] Followed by Empress v. Ghulet, I. L. R., 7 All. 44, infra. p. 181.

To support a finding upon an alternative charge of perjury, there must be legal evidence of the truth of each branch of the charge. The deposition of the prisoner, given in Hindustani, but taken in English by the Magistrate, and the memorandum at the foot of the deposition that it was read to the witness and was by him acknowledged to be carrect, though held not to be quite satisfactory (as the person who took down in English what the prisoner had said in Hindustani was not examined as a witness, and the prisoner had no opportunity of cross-examining him), was admitted as a proper deposition within the provisions of the Code of Criminal Procedure, and the memorandum was taken, under s. 80 of the Evidence Act (I. of 1872), as evidence of the facts stated in it, and as affecting some evidence that the translation was correct.—Queen v. Gonowei, 22 W. R. 2. [Phear and Morris, JJ. April 21, 1874.] Follows Queen v. Mahomed Hoomayoon Shah, 21 W. R. 72; 13 B. L. R. 324; which again is followed by Empress v. Ghulet, I. L. R., 7 All. 44, infra, p. 181.

A PRISONER, who had made certain contradictory statements on oath before a Magistrate and a Court of Session respectively, was convicted by the same Court of Session on a charge, in the alternative, of giving false evidence, either before a Magistrate or before the Court of Session. Held that the Court was precluded, by s. 473 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 487 of the new Code of Criminal Procedure (Act X. of 1882), from trying the charge.—Sundrian v. Reg., I. L. R., 3 Mad. 254. Turner, C.J. Aug. 8, 1881.]

In prosecutions for giving false evidence under s. 193 of the Penal Code, the case of each person accused should be separately inquired into, and, if committed for trial, separately tried. It is wholly erroneous to include them in one joint charge. It is not of itself sufficient to warrant a conviction for giving false evidence that an accused person has made one statement on oath at one time, and a directly contradictory one at another. The charge must not only allege which of such statements is false, but the prosecutor must be prepared with confirmatory evidence independent of the other contradictory statement to establish the falsity of that which is impeached as untrue.* R. v. Jackson (I Levis C. C. 270), Reg. v. Wheatland (8 C. and P. 238), and Rex v. Harris (3 B. and Ald. 926), referred to. S. 455 of Act X. of 1872 (or s. 236 of Act X. of 1882) is no authority for framing, against a person accused of giving false evidence, who has made one statement on oath on one occasion, and a directly contradictory one on oath on another occasion, a charge in the "alternative;" that word, as used in that section, meaning that, where the facts which can be proved make it doubtful what particular description of offence an accused person has committed, the charges may be so varied or alternated as to guard against his escaping conviction through technical difficulties. Held, therefore, where three persons were committed for trial jointly charged with " having, on or about the 26th September 1881, or the 18th October 1881, being legally bound upon cath to state the truth, knowingly, on those days, regarding the same subject, made contradictory statements upon oath," and thereby committed an offence punishable under s. 193 of the Penal Code, and such persons were jointly tried on such charge, that such charge was had for being single and joint against the three accused persons, instead of several and specific in regard to each of them; that it was further bad because it did not distinctly and in terms allege which of the statements was false; that, assuming a committal upon so faulty a charge should be allowed to stand, the Court of Session should have prepared a fresh charge against each of the accused persons specifically, setting forth the statement alleg to be false, and should then have proceeded to try each of them separately; and that, th being no evidence that either of the statements made by two of such persons was fall except that it was contradicted by the other, the charge against such persons was not s tainable, there being no sufficient evidence that either of the statements was false.—E PRESS v. NIAZ ALI, I. L. R., 5 All. 17. [Stuart, C.J., and Straight, J. July 24, 1882]

^{*} Overruled by Empress v. Ghulet, I. L. R., 7 All. 44, infra, p. 181.

S. 161 of the Code of Criminal Procedure (Act X. of 1882) makes it obligatory on a person examined in the course of a police-investigation under ch. 14 to answer truly all questions put to him (other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture), and such person, if he knowingly answers falsely, rommits the offence of giving false evidence in a stage of judicial proceeding under s. 193 of the Penal Code. The accused was convicted by the Sessions Court on an alternative charge of having given false evidence in a judicial proceeding under s. 193 of the Penal Code, one statement being made before a head-constable of police, and the other before the Magistrate (F. C.). There was no evidence to prove which of the two statements was false. The prisoner appealed to the High Court, which delivered the following judgment: "S. 161, Criminal Procedure Code, 1882, says that any person, being under examination in the course of the police-investigation under Ch. XIV. (s. 155) of the Code, shall be bound to answer truly all questions put to him (with certain exceptions not applicable to the present case). This provision is new. Under the previous law, the obligation 'to answer truly' in a police investigation was not enforced by any express provision. S. 191 of the Penal Code says that, if a person, who is bound by any express provision to state the truth, states knowingly what is false, he is said to give false evidence. The appellant in this case has, therefore, as the law now stands, given false evidence S. 193 of the Penal Code says that whoever intentionally gives false evidence in any stage of a judicial proceeding shall be punished, &c. And under expl. 2 of the same section a police-investigation under Ch. XIV. of the Criminal Procedure Code is a stage of a judicial proceeding. We therefore think that the District Judge's decision is right under the present law, and reject the petition of appeal."—QUBEN-EMPRESS v. PARSHRAM RAYSING, I. L. R., 8 Bom. 216. [Pinhey and Scott, J]. Nov. 29, 1883.]

In order to sustain any conviction for giving false evidence upon an alternative charge when no evidence is offered to prove the falsity of either statement in particular, it must be clear that the two statements are contradictory. The law laid down by the Full Bench in the case of Empress v. Kassim Khan (I. L. R., 7 Cal. 121) has been altered by the provisions of s. 161 of the Code of Criminal Procedure (Act X. of 1882), and a witness who makes a false statement to a police-officer in reply to a question which he is bound to answer would be guilty of intentionally giving false evidence. When four persons were accused of having given false evidence in the same proceeding, and the Sessions Judga, while professing to try each accused separately, heard the evidence of the witnesses only once, held that this was substantially trying the four prisoners together, and was an improper mode of procedure.—NATHU SHEIKH v. EMPRESS, I. L. R., 10 Cal. 405. [McDonell and Field, JJ. Feb. 7, 1884.]

A PRISONER was convicted on an alternative charge in the form provided by sch. 5 xxviii., ii. (4), of the Criminal Procedure Code, of having given false evidence, such evidence consisting of contradictory statements contained in one deposition while he was under cross-examination and re-examination as a witness in a judicial proceeding. There was no finding as to which of the contradictory statements was false. Held (Norris, J., dissenting) that s. 233 of the Criminal Procedure Code did not affect the matter, and that the conviction was good. Semble per Wilson, J.—The decision in Queen v. Bedoo Noshyo [12 W. R. 11), though a guide to the discretion of Courts in framing and dealing with charges, was not intended to and does not affect the law applicable to the matter.—Habibullah v. Empress, I. L. R., 10 Cal. 937. [Wilson, Tottenham, and Norris, J]. July 7, 1884.]

In a charge under s. 193 of the Penal Code, it is not necessary to allege which of two contradictory statements upon oath is false, but it is sufficient (unless some satisfactory explanation of the contradiction should be established) to warrant a conviction of the offence of giving false evidence to show that an accused person has made one statement upon path at one, time, and a directly contradictory statement at another. R. v. Zilmeerun (6 W. R. 65), R. v. Palany Chetty (4 Mad. H. C. R. 51), and R. v. Mahomed Hoomayoon Shah (13 B. L. R. 324), followed. Empress v. Nias Ali (1. L. R., 5 All. 17) overruled. Per Duthoit, J.—Every possible presumption in favour of a reconciliation of the two statements should be made, and it must be found that they are absolutely irreconcilable before a conviction can be had upon the ground that one of them is necessarily false. The English tases mpon this subject are irrelevant to the interpretation of the law of India, since the Indian Logislature has not followed the law of England in regard to perjury. Trimble v. Hill (L. R., Ap. Cas., 342) and Kathama Natchiar v. Dorasinga Tever (L. R., 2 Ind. Ap. 159) referred to.—Quern-Empress v. Ghulet, I. L. R., 7 All. 44. [Straight, Offg. C.J., and Duthoit, J. July 31, 1884.]

THE accused was charged, in the alternative, by the trying Magistrate, as follows: "I, W. W. Drew, Magistrate, First Class, hereby charge you, Ramji Sajabarao, as follows: 'That you, on or about the 13th day of October 1882, at Nandarpada, stated that you had seen Vishnu Vaman and Mahadu Lakshman carrying teakwood from Gohe Forest to Narayan Ramchandra, range forest-officer, and on 14th February 1885 you stated on eath before the First-class Magistrate at Pen, at the trial of these persons, that you did not see where they had brought the wood from, and thereby committed an offence punishable under s. 182 or s. 193 of the Penal Code (Act XLV. of 1860), and within my cognizance; and I hereby direct that you, Ramji Sajabarao, be tried by the said Court on the same At the trial, the accused asserted the truth of the former of these two statements, and denied having made the other. The Magistrate was unable to find which of them was false, and convicted the accused, in the alternative, either under s. 182 or a. 192 of the Penal Code (Act XLV. of 1860). Held that the charge was bad in law, being an alternative charge in a form forbidden by s. 233 of the Criminal Procedure Code (Act X. of 1882), which directs that, for every distinct offence of which any person is change there shall be a separate charge. Nor could the accused be tried upon a charge f in the alternative as in the form given in sch. 5-28 (4) of the Criminal Procedure Code (Act X. of 1882). For, upon the facts alleged, there was no way of charging him w one distinct offence on the ground of self-contradiction. He could not successfully charged, under s. 193 of the Penal Code (Act XLV. of 1860), on contradictory states because he only made one deposition, in which there were no discrepancies; and, similarly, he could not be charged under s. 182 of the Penal Code, for he only once gave information to a public servant. Held also that, having regard to ss. 225, 232, and 537 of the Criminal Procedure Code (Act X. of 1882), the accused, convicted upon such a charge must be held to have been misled in his defence, and his conviction and sentence reversed In charges founded upon supposed contradictory statements, every presumption in favor of the possible reconciliation of the statements must be made. Under s. 172 of the Fa est Act (VII. of 1878), a forest-officer is a public servant within the meaning of the Pe Code (Act XLV. of 1860). Any information given to him with the intent mentioned in s. 182 of the Penal Code is punishable under that section, whether that information is volunteered by the informant, or is given in answer to questions put to him by that off cer.—Queen-Empress v. Ramji Sajabarao, I. L. R., 10 Bom. 124. [Nanabrai Harida and Wedderburn, JJ. Sep. 7, 1885.]

An accused was charged with giving false evidence upon an alternative charge, a statement having been made to a police-officer investigating a case of arson, and the other having been made when he was examined as a witness before the Joint-Magistrate when the case was being inquired into. The two statements were contradictory, and no ev dence was given to show which of them was false. It was not proved that the statement made to the police-officer was made in answer to questions put by him, and the only evi dence given at the trial with regard to the inquiry upon which the police-officer was gaged was to the effect that an inquiry was being made about the burning of a house. jury acquitted the accused, and the case was referred to the High Court by the Sea ludge, who disagreed with the verdict of acquittal. Held that the verdict was right, fore a conviction in such a case can be sustained, it must, having regard to the provision of s. 161 of the Criminal Procedure Code, be clearly proved by the evidence that the etable ment made to the police-officer was a statement in answer to questions put to the accuse by the investigating police officer, and in the absence of such evidence, even though th statement were proved to be false, a conviction could not be sustained. Held, further, the in such a case it is also necessary for the prosecution to establish that the police-constant was making an investigation under ch. 14 of the Criminal Procedure Code.—Tree Es PRESS v. BAIKANTA BAURI, I. L. R., 16 Cal. 349. [Mitter and Macpherson, JJ. Mar. 4, 183]

It is not necessary that the statement of a witness recorded under s. 161 of the Co of Criminal Procedure, 1882, should be elicited and recorded in the form of alternate question and answer. It is sufficient if such statement is substantially an answer to do or more questions addressed to the witness before the statement is made. The provision of ss. 191 and 193 of the Penal Code do apply to the case of false statements made under s. 161 of the Code of Criminal Procedure, 1882. It is not illegal, though unnecessary, a police-officer recording a statement under s. 161 of the Code of Criminal Procedure 1882, to obtain the signatures of persons present at the time to authenticate his-records such statement.—Queen-Empress v. Bhagwantia, I. L. R., 15 All. 11. [Edge, C.J., and Tyrrell, J. July 9, 1892.]

FALSE EVIDENCE, ABETMENT OF.

UNDER S. 193 it is an offence to suppress evidence. Thus, where the accused asked a sitness to suppress certain facts in giving his evidence before a Magistrate on a charge of learnation, it was held that this constituted abetment of the offence of giving false evidence in a stage of a judicial proceeding.—In re ANDY CHETTY, 2 Mad. H. C. R. 438. Free and Innes, JJ. Aug. 12, 1865.]

WHERE C falsely represented himself as U, the writer of a document signed by U, and T, knowing that C was not U, and had not written such document, produced C as U, and as the writer of the document, it was held that T ought to be convicted on a charge of betting the giving of false evidence.—Queen v. Chundi Churn Nauth, 8 V.R. 5. [Jackson and Hobhouse, J]. June 4, 1867.]

It is not necessary to constitute the offence of abetment that the act abetted should ecommitted.—Reference in the Case of Dinonath Burooa, 18.W. R. 32. Kemp and Glover, JJ. July 24, 1872.]

THERE can be no offence of the abetment of giving false evidence unless the person barged with abetment intended, not only that the statement should be made, but intended at the statement should be made falsely.—Queen v. Nim Chand Mookerjee, W. R. 41. [Markby and Birch, J]. June 27, 1873.]

THE Magistrate convicted accused of abetting the giving of false evidence in a judial case proceeding before himself. Held that, as by the proceedings of 24th March 1873, Magistrate could not have tried the person who gave false evidence, he could not try abettor.—Pro., Nov. 6, 1873, 7 Mad. H. C. R., Ap, 28. According to s. 487 of the new ode of Criminal Procedure (Act X. of 1882), no Judge of a Criminal Court or Magiste, other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency lightrates, can try any person for the offence of giving false evidence when such offence committed before himself.

FALSE EVIDENCE, WHAT IS A GIVING OF.

A WITNESS falsely deposing in another's name should be charged with giving false idence under s. 193, and not with cheating by personation under ss. 415 and 419 of the mal Code.—Reg. v. Prema Bhika, 1 Bom. H. C. R. 89. [Forbes, Westropp, and locker, J]. Nov. 5, 1863.]

THE making of a false statement without knowledge as to whether the subject-matter the statement is false or not is legally a giving of false evidence.—QUEEN v. ECHAN ECHAN 2 W. R. 47. [Glover, J. Mar. 20, 1865.]

A SUB-REGISTRAR is competent, for any purpose contemplated by Act XX. of 1866, examine any person; and any statement made by such person before an officer in any occedings or inquiries under the Act, if intentionally false, renders such person liable to triminal prosecution.—Queen v. Juggut Chunder Dutta, 6 W. R. 81. [Kemp and arkby, J]. Oct. 5, 1866.]

THE making of a false return of service of summons is an offence punishable, not der a. 181, but under s. 193, of the Penal Code.—Queen v. Shama Churn Roy, 8 W. 27. [Jackson and Hobhouse, JJ. June 25, 1867.]

In trying a prisoner charged with giving false evidence, a Sessions Judge rejected is which were proved by the evidence of certain witnesses, because a medical officer we it as his opinion that what the witnesses deposed to could not be true. Held that it is not the proper way to try a case to rely on mere theories of medical men or skilled messes of any sort against facts positively proved. Norman, J., in delivering the judgmesses of the Court, observed: "It appears to us that the true rule is that no man can be writted of giving false evidence, except upon proof of facts which, if accepted as true, ow, not merely that it is incredible, but that it is impossible that the statement of the try accused made upon oath can be true. If the inference from the facts proved falls at of this, it seems to us that there is nothing on which a conviction can stand; besee, assuming all that is proved to be true, it is still possible that no crime was comted."—Queen v. Ahmed Ally, II W. R. 25. [Norman and Jackson, JJ. April 5, fa]

A conviction may be had for giving false evidence under s. 193, Penal Code, even the evidence given in matters not judicial (such as before the Collector acting in his

fiscal capacity under Reg. XIX. of 1814), but it must be proved that the false statems was made under the sanction of the law.—In the Matter of Audheen Roy, 14 W. 24. [Bayley and Kemp, JJ. July 30, 1870.]

When an offence under s. 193 of the Penal Code is established, a conviction use s. 181 is illegal. When the accused made, on solemn affirmation, a statement before Income-tax Commissioner, which statement the accused knew, or had reason to belief to be incorrect, it was held that such statement amounted to the offence of giving fall evidence in a judicial proceeding under s. 193 of the Penal Code, and was, therefore, a cognizable by a Full-power Magistrate, as it could not be treated as constituting an offen triable under s. 181 of the Penal Code (making a false statement to a public servant). REG. v. Dayalji Endarji, 8 Bom. H. C. R. 21. [Lloyd and Kemball, JJ. April 25, 187]

The examination of a complainant in reference to the matter of his petition of coplaint is an investigation directed by law, and therefore a stage of a judicial proceeding Consequently, if, in the course of that examination, false evidence is intentionally given by the complainant, he is legally chargeable with the offence described in s. 103 of the Penal Code. If the charge of voluntarily causing hurt, contained in a petition of coplaint, is wilfully false, and made with intent to injure, then the complainant is legal chargeable with the offence described in s. 211 of the Penal Code.—Queen v. Mata Dya 4 N.-W. P. 6. [Pearson, J. Jan. 13, 1872.]

A STATEMENT, untrue to the prisoner's knowledge, made upon oath in the course a judicial proceeding, amounts to perjury, notwithstanding the fact that the statement self is immaterial to the matter before the Court.—Queen v. Shib Prosad Giri, 19 V R. 69. [Phear and Glover, J]: April 29, 1873.]

A PETITION not bearing the signature of the accused, and therefore not a declaration made or subscribed by him, cannot be made the foundation of a charge or conviction under s. 199 of the Penal Code; but a deposition on oath supporting such a petition, if fals justifies a charge under s. 193 of the Code.—In the Matter of Ram Reevay Koowa 7 C. L. R. 536. [Garth, C.J., and Maclean, J. Oct. 22, 1880.]

PERSONS giving false answers to questions put by a police-officer conducting an inquipreliminary to a proceeding before a Court of Justice may be convicted of giving false edence under ss. 191 and 193 of the Penal Code.—IN THE MATTER OF JUGGERNATH SAN 8 C. L. R. 236. [Cunningham and Prinsep, JJ. Feb. 15, 1881.]

A CHARGE of giving false evidence under s. 193 of the Penal Code cannot be sustained in respect of a statement made to a police-officer engaged in making an investigation under the provisions of the Criminal Procedure Code. Ss. 118 and 119 of the latter Compose no legal obligation on the persons examined thereunder to speak the truth.—E PRESS 7. KASSIM KHAN; EMPRESS 7. MUSST. DABI, 8 C. L. R. 300 (F. B.). But see the provision in the corresponding section of the Criminal Procedure Code of 18 (s. 161) which makes it compulsory on persons to answer truly all questions. See Quest Empress v. Parshram Raysing, 1. L. R., 8 Bom. 216, under the heading, "Contradiction Statements—Alternative Charge," p. 181.

A person filing a written statement in a suit is bound by law to state the truth, a if he makes a statement which is false to his knowledge or belief, or which he believes to be true, he is guilty of giving false evidence within the meaning of s. 191 of the Percode.—Queen-Empress v. Mehrban Singh, I. L. R, 6 All 626. [Straight, Offg. July 14, 1884.]

FALSE STATEMENT BEFORE OFFICER NOT HAVING JURISDICTION.

WHERE a plaintiff before a Munsif came and petitioned the Judge, complaining the Munsif had improperly refused to examine his witnesses, and had dismissed his stalthough informed that witnesses were in attendance, and the Judge, upon examining petitioner upon solemn affirmation, and finding the charge unproved, ordered proceeding to be taken against the petitioner for giving false evidence, held that the Judge had not thority to examine the petitioner upon oath in such a case, and that the oath having be made, and the evidence given coram non judice, could not form the subject of a prosection for false evidence.—Queen v. Chota Jadub Chunder Biswas, W. R., Sp., [Seton-Karr and Jackson]], Mar. 2, 1864.]

WHERE a Subordinate Magistrate conducted an inquiry in a case of murder and ri without having received the necessary authority under s. 192, Act X. of 1882, it was he

the and untrue statement made by a witness in the course of such inquiry was not "false induce" within s. 193, as the Subordinate Magistrate was acting without jurisdiction.—
BUSHI KHAN v. CROWN, Panj. Rec., No. 24 of 1870.

HELD by the Division Bench that, where the Assistant Commissioner had no juristion to entertain a suit against one R K, he had, therefore, no authority under Act X. of to administer an oath or affirmation to him in the course of the trial: that therefore K was never legally bound to state the truth, and was therefore not liable to be conteed of giving false evidence in respect of any statement made by him in the trial of the id case upon the merits.—NARINJAN DAS v. RAM KISHEN, Panj. Rec., No. 32 of 1879.

A DEPUTY MAGISTRATE has no power to administer an oath to a person making a denation in the shape of an affidavit; and such person cannot, on the facts stated in such indication, be prosecuted for committing an offence, either under s. 193 or s. 199 of the sail Code.—In the Matter of Iswar Chunder Gohu, I. L. R., 14 Cal. 653. [Person, C. J., and Ghose, J. June 30, 1887.]

A STATEMENT taken by a Third class Magistrate under s. 164 of the Code of Crimis Procedure (ACT X. of 1832), such Magistrate not having authority to carry on the prebinary inquiry in the case, is not evidence in a stage of a judicial proceeding within the meaning of ss. 191 and 193 of the Penal Code, such that, when the statement is condicted afterwards before the Magistrate having jurisdiction, and exercising it in the prebinary inquiry. It will form a sufficient basis for an alternative charge of giving false evilice in a judicial proceeding.—Queen-Empress v. Bharma, I. L. R., 11 Bom. 702. [Sar-Mark C.]., and West and Nanabhai Haridas, JJ. Dec. 20, 1886.]

It is no offence to make a false statement before a person purporting to act in excession of the Registration Act, but not legally authorized so to do.—Radhika Mohun ser v. Lal Mohan Sha, I. L. R., 20 Cal. 719. [Trevelyan and Rampini, J]. Mar. 23, Inc.

FALSE STATEMENT TENDING TO CRIMINATE.

WHEN a party makes a false statement, being legally bound by solemn affirmation, a fact that the statement was one tending to criminate himself will not justify his achieved on a charge of giving false evidence.—Pro., Feb. 21, 1867, 3 Mad. H. C. Rep., p., 30.

ALTHOUGH a person, under examination as a witness, is bound by his affirmation to the trath, if he is examined on a point on which he is likely to criminate himself, his pation should be explained to him by the Magistrate, as otherwise he may be induced, bough ignorance of the state of the law, to deny the existence of the facts for fear of hal consequences. Although, without such a warning, he may make a false denial, and mely become guilty of the offence of intentionally giving false evidence, his offence will the deserving of severe punishment.—IN THE MATTER OF JADOONATH DUTT, 2 C. L. 181. [Markby and Prinsep. JJ. April 18, 1878.]

INTENTION.

CORRUPT intention in giving false evidence may be inferred from circumstances. -- -- RAM, 2 W. R. 63. [Glover, J. April 20, 1865.]

A CONVICTION on a charge of giving false evidence was set aside, the alleged conting statements having been made after a lapse of four years, and there being no proof deliberate intention to give false evidence, which was held to be the gist of the offence. QUEEN V. NAGBUNSEE LALL, 6 W. R. 89. [Kemp and Markby, JJ. Dec. 10, 1866.]

THE intention is an essential ingredient in the offence contemplated by s. 2018 of the mal Code. The making of a false return of service of summons is an offence punishie, mg under s. 181, but under s. 193, of the Penal Code, and is cognizable by the Court Session alone.—QUEEN v. SHAMA CHURN ROY, 8 W. R. 27. [Jackson and Hobhouse,] June 25, 1867]

THE mere fact that a person has made a statement which contradicts a previous stement is not itself necessarily sufficient to bring him within s. 193, Penal Code. The runstances under which, and the intention with which, the particular statement relied by the prosecution is made, must, in each case, be considered before it can be held at the offence has been committed.—Queen v. Soonder Mohooree, 9 W. R. 25. Lacpherson and Jackson,]]. Mar. 2, 1868.]



In a case of giving false evidence by making contradictory statements, the Commust be satisfied as to the intention with which the statements were made.—QUEEN DENONATH BUZZAR, 9 W. R. 52. [Macpherson and Glover, JJ. Mar. 30, 1868.]

Upon a prosecution for giving false evidence, the law does not require proof of corrupt intention. It is sufficient that there is proof of intention, and if the statemen was false, and known by the accused to be false, it may be presumed that, making it, th accused intentionally gave false evidence.—Queen v. Ameer Ali Khan, 3 N.-W. P. IX [Turner, J. June 16, 1871.]

The rule of civil procedure contained in the last clause of s. 258 of the Civil Procedure Code (Act XIV. of 1882)—that uncertified adjustments of a decree are not to be recognized by "any Court"—does not affect the substantive criminal law. The word "any Court" in that clause have no application to a Criminal Court investigating charge of fraudulently executing a decree under s. 210 of the Penal Code. Those word do not bar any criminal remedy which an injured judgment-debtor may have against fraudulent decree-holder, whether by a prosecution under s. 193, 210, 406, or any oth section of the Penal Code. In s. 210 of the Penal Code the word "satisfied" is to understood in its ordinary meaning, and not as referring to decrees, the satisfaction which has been certified to the Court. Under s. 235 of the Code of Civil Procedure (At XIV. of 1882); the decree-holder, or the party who applies for execution, is bound to stat in his application any adjustment between the parties after decree, whether such adjustment has or has not been previously certified to the Court. Paupayya v. Narrasanna (I. L. R., 2 Mad. 216) followed. Intentional omission to make such statement amounts tan offence under s. 193 of the Penal Code. S. 199 of the Penal Code does not apply applications for execution containing false averments.—Queen-Empress v. Bapuil Daya Ram, I. L. R, 10 Bom. 288. [Birdwood and Jardine, J]. Feb. 18, 1886.]

THE maxim, Ignorantia juris non excusat, cannot be applied to a declaration, thougon in fact false, made under s. 18 of Act XV. of 1872, inasmuch as the declaration require by that section to be made is a declaration as to the belief only of the person making is and further, in order to entail the penal consequences provided for by s. 66 of the second, such false declaration must be made "intentionally."—QUEEN-EMPRESS v. ROBISON, I. L. R., 16 All. 212. [Tyrrell and Blair, JJ. Jan. 23, 1894.]

JUDICIAL PROCEEDING, WHAT IS NOT A STAGE OF.

An inquiry by an Assistant Magistrate, with a view to tracing the writer of an anonymous letter addressed to him, charging certain persons with murder, and without referent to the truth or otherwise of the charge of murder, is not a stage of a judicial proceeding in which the giving of false evidence is punishable under s. 193 of the Penal Code.—Quest v. Bykunt Nath Bannerjee, 5 W. R. 72. [Jackson and Glover, JJ. April 23, 1866.]

The prisoner was convicted of perjury by wilfully making a false statement in a verified petition presented under \$. 19 of the Income Tax Act (IX. of 1869) to a Tahsild Held that the Tahsildar was not an officer competent to receive such a petition, and the no offence was committed.—In the Matter of Moniappa Oodian, 5 Mad. H. C. R. 34 [Scotland, C.J., and Collett, J. Mar. 11, 1870.]

The prisoner, a vakil. presented a vakalatnama in the District Munsif's Court sign by the defendant in a civil suit, authorizing the prisoner to appear for the defendant. I vakalatnama falsely purported to have been executed before the adhikari of the villa; and to bear the signature of the adhikari. The prisoner was convicted under s. 193 of Penal Code. Held that the case was not brought within the section, and that the prison was entitled to his discharge from custody.—In re Keilasum Putter, 5 Mad. H. C. R. 3 [Scotland, C J., and Innes, J. July 11, 1870.]

The accused was convicted of intentionally giving false evidence in a judicial preceding, in having as a witness therein made, on solemn affirmation, a false statement the proceedings in the trial at which the alleged false evidence was given were subquently annulled in consequence of the sanction for the prosecution being insufficient the conviction of the accused must be reversed, as the false statement was made in a stage of judicial proceeding. The proceedings in a criminal trial, when necessary to be proved, should be proved by their production.—Reg. v. Ravji valad Tal 8 Bom. H. C. R. 37. [Gibbs and West, JJ. June 15, 1871.]

A MAN died leaving some money due to him in the hands of the Telegraph Authoriti
P wrote a letter to those authorities, claiming the money as the sole heir of the decease

This letter was sent to the District Judge for verification and orders. P supported his claim issue the Judge by the evidence on oath of C. C's evidence being, in the opinion of the District Judge, false, the District Judge, in his capacity as Sessions Judge, tried him for giving false evidence, and convicted him of that offence. Held that, as the reference to the District Judge by the Tielegraph Authorities of P's letter for verification, and the integrated action in regard thereto, did not constitute a "judicial proceeding," and as the District Judge had not any authority to administer an oath to C, the conviction was illegal. Held, also, that the District Judge had no jurisdiction, under s. 477 of the Criminal Procedure Code, to try C.—Empress v. Chait Ram, I. L. R., 6 All. 103. [Straight,]. Oct. 27, 1883.]

A STATEMENT taken down in the course of a police-investigation by a police-contable under 2. 161 of the Criminal Procedure Code (Act X. of 1882) is not evidence at my stage of a judicial proceeding.—QUEEN-EMPRESS v. ISMAL valad FATARU. I. L. R., II Len. 659. [West and Birdwood, JJ. April 5, 1887.]

LOCUS PŒNITENTIÆ.

Huld by the majority of the Court (Jackson, J., dissentiente) that there ought to be like panitentiae for witnesses who have deposed falsely to retract their false statements.—Queen v. Gullie Mullick, W. R., Sp., 10. [Steer, Seton Karr, and Jackson, J]. Feb. 18, 1864.]

MAGISTRATE BEFORE WHOM FALSE STATEMENT MADE NOT TO TRY CASE.

WHERE a false statement is made in a stage of a judicial proceeding before a Magistate, he ought not to convict under s. 181 of the Penal Code, but should commit to the Sessions under s. 193 of that Code.—QUEEN v. NUSSUROODDEEN SHAZWAL, 11 W. R. 24. [Norman and Jackson,]]. Mar. 25, 1869.]

THE Magistrate, before whom the offence of intentionally giving false evidence in a dicial proceeding is committed, may himself try and commit the persons so offending.

—QUEEN V. RAMLOCHUN SINGH, 18 W. R. 15. [Kemp and Glover, JJ. June 11, 1872]

WITH the exception of cases triable by the Court of Session exclusively, a Court cannot try any offence described in ss. 467, 468, and 469 of the Code of Criminal Procedure
1Att X. of 1872), corresponding with s. 195 of the new Code of Criminal Procedure (Att
2. of 1882), when committed before itself.—Pro., Mar. 24, 1873, 7 Mad. H. C. R., Ap., 17

THE offence of intentionally giving false evidence in a judicial proceeding cannot be field by the Magistrate before whom the false evidence is given. This offence, being an literapt to pervert the proceedings of a Court to an improper end, is a contempt of its inthority (ss. 435, 436, 471, 472, and 473 of the Code of Criminal, Procedure).—Reg. v. KAYRAMBEG DULABEG, 10 Bom. H. C. R. 73, [Bayley and West.] J. May 21, 1873.]

HELD (Stuart, C.J., dissenting) that an offence under s. 193 of the Penal Code, being in offence in contempt of Court within the meaning of s. 473 of Act X. of 1872 (corresponding with s. 487 of Act X. of 1882), cannot, under that section, be tried by the Magistate before whom such offence is committed. Queen v. Kultaran Singh (I. L. R., I All. 193) and Queen v. Fagat Mal (I. L. R., I All. 162) overruled. Per Stuart, C.J.: A Magistate before whom such an offence is committed, if competent to try it himself, is not presided from so doing by the provisions of s. 471 of Act X. of 1872 (corresponding with L476 of Act X. of 1882).—Empress v. Kashmiri, I. L. R., I All. 625. [Stuart, C.J., and Pearson, Turner, Spankie, and Oldfield, JJ. Aug. 22, 1877.]

UNDER s. 487 of the Code of Criminal Procedure (Act X. of 1832), Judges of High Courts, the Recorder of Rangoon, and Presidency Magistrates, are empowered to try mass under s. 193 of the Penal Code, even though the false evidence has been given before themselves, and they have sanctioned the prosecution: but this power has not been extended to Mofussil Magistrates.

MATERIALITY.

THE materiality of the subject-matter of the statement is not a substantial part of the offence of giving false evidence in a judicial proceeding: and an indictment, under 19, 193 of the Penal Code, though it does not allege materiality, is good if it alleges wificiently the substance of the offence.—Reg. v. Aidrus Sahib, i Mad. H. C. R. 38, Scotland. C. J., and Bittleston, J. Oct. 30, 1862.]

In a case of false evidence, it is not necessary for the Judge in his charge to how the false statements, even if made intentionally, are material in the case. — Qu. PARBUTTY CHURN SIRCAR, 6 W. R. 84. [Loch, J. Nov. 20, 1866.]

To constitute the offence of giving false evidence under s. 191 of the Penal Co is not necessary that the false evidence given should be material to the case in whi is given. Aliter under s. 192. Where the Senior Assistant Sessions Judge, witaking evidence, acquitted the accused after calling upon him to plead, the prose being unable to say that the alleged false statements of the accused were material trial on which they were made, the High Court reversed the order of acquittal, directed the trial to be proceeded with.—Reg. v. Damodhor Ramchandra Kulks 5 Bom. H. C. R. 68. [Newton and Tucker, JJ. Aug. 13, 1868.]

OATH OR AFFIRMATION

WHERE a witness was, at the beginning of the day, solemnly affirmed, once to speak the truth in all the cases coming before the Court that day, held that he raise convicted, under s. 193 of the Penal Code, of giving false evidence in a suit which on that day, although he was not affirmed to speak the truth in that stit after it was on for hearing, and the names of the cases in the day's list were not mentioned when affirmation was administered.—Reg. v. Vennatachalam Pillai, 2 Mad. H. C. R. [Scotland, C.]., and Bittleston, J. Mar. 15, 1864.]

A CHARGE of perjury held unproved without proof that the statement on which is founded was given on solemn affirmation under Act V. of 1840 instead of on oath.—Quv. Manwar Khan, 4 W. R. 24. [Loch and Glover, J]. Nov. 11, 1864.]

A HINDU, who has become a convert to Christianity, is not under a legal oblige to speak the truth, unless his evidence be given under the sanction of an oath on the Gospels, so as to justify a conviction under s. 193 of the Penal Code. A statement by a witness in a criminal trial not upon oath or solemn affirmation is not a declar within the meaning of s. 199 of the Penal Code, nor is the witness bound to match declaration under s. 191.—In re A. VEDAMUTTU, 4 Mad. H. C. R. 185. [Scotland, and Ellis, J. Dec. 21, 1868.]

No omission to take any oath or make affirmation, no substitution of any one for other of them, and no irregularity whatever in the form in which any one of them in ministered, shall invalidate any proceeding, or render inadmissible any evidence what in or in respect of which such omission, substitution, or irregularity took place, or affect the obligation of a witness to state the truth.—Oaths Act (X. of 1873), s. 13. a Full Bench of the Calcutta High Court has ruled (Jackson, J., dissenting) that the dence of a witness, who was examined on simple affirmation under the direction Judge, is admissible as evidence, and that the word "omission" in s. 13 of the Act (X. of 1883) includes any omission, and is not limited to accidental or negligent sions.—Queen v. Sewa Bhogta, 23 W. R. 12; 14 B. L. R. 294. [Couch, C.]., and K. Jackson, Phear, and Markby, JJ. Dec. 22, 1874.]

V was tried and convicted under s. 193 of the Penal Code for giving false evide before the Court of a village-munsif in a suit in which V was defendant. The village munsif sanctioned the prosecution of V under s. 105 of the Code of Criminal Procedon appeal the Sessions Judge acquitted V on the grounds that a village-munsif in power to administer oath to V (the case not being one in which either party was used to allow the cause to be settled by the oath of the other, and because s. 195 of the of Criminal Procedure did not apply. Held that both objections to the conviction bad in law.—QUEEN-EMPRESS V. VENKAYYA, I. L. R., 11 Mad. 375. [Collins, C.J. Parker, J. Feb. 22 and Mar. 13, 1888.]

THE offence of intentionally giving false evidence, referred to in s. 193 of the Code, may be committed, although the person giving evidence has neither been swor affirmed.—GOBIND CHANDRA SEAL v. QUEEN EMPRESS, I. L. R., 19 Cal. 355. [Norra Beverley, J]. Feb. 15, 1892.]

FALSE EVIDENCE IN CROSS-EXAMINATION.

M S was convicted under s. 500 of the Penal Code of defaming S S by male certain statement when under cross-examination as a witness before a Court of calculation. Held that the conviction was bad. The statements of witnesses are private that the conviction was bad.

if farse, the remedy is by indictment for perjuty, and not for defamation.—MANJAYA v. SESHA SHETTI, I. L. R., 11 Mad. 477. [Collins, C.J., and Shephard, J. April 11 and 24, 1888.]

PRELIMINARY ENQUIRY.

When a Magistrate takes action under s. 476 of the Code of Criminal Procedure, it is not necessary to the validity of his order that he should hold a preliminary inquiry. Baperam Surma v. Gouri Nath Dutt (I. L. R., 20 Cal. 474) followed.—Queen-Empress v. Matabadal, I. L. R., 15 All. 392. [Aikman, J. June 13, 1893.]

PUNISHMENT.

THE denial of one's relationship to his brother, whose witness he was, was held to be a kind of false evidence, meriting only a mild punishment.—QUEEN v. GOVIND SAHOO, W. R., Sp., 14. [Steer and Seton-Karr, JJ. Feb. 29, 1864.]

A SENTENCE of five years' imprisonment was not excessive in the case of a man connected of making a false statement in a judicial proceeding with the intention of defeating the ends of justice by procuring the acquittal of a guilty person.—Quben v. Anoo, W. R., Sp., 16. [Lock, Seton-Karr, and Jackson, JJ. Mar. 14, 1864.]

What was held to be a sufficient punishment in a case of false evidence in which the prisoners pleaded guilty before the Sessions Court.—QUEEN v. UNNOO PATOONEE. 3 W. R. 15. [Jackson and Glover, JJ. May 18, 1865.]

A FALSE statement by a witness, as to his position or character, ought not to be punished so severely as a false charge or a false claim. —QUEEN v. REWAH GOALLAH, 5 W. R. 95. [Norman and Campbell, I]. May 28, 1866.]

A DELIBERATE mis-statement made in a Court of Justice, whether it tends to endanger the life and property of others, or to defeat and impede the progress of justice, is not an offence which should be lightly passed over. But for a simple mis-statement from which no such inferences can be drawn, a comparatively light sentence will suffice, particularly where the prisoner pleads guilty, and throws himself on the mercy of the Court.—Queen v. Gurjoon Aheer, 7 W. R. 37. [Loch and Seton-Karr, J]. Mar. 6, 1867.]

FALSE charge under s. 211 and false evidence under s. 193 are not cognate offences, nor parts of the same offence, but may be punished separately.—QUEEN v. ABDOOL AZEEZ, 7 W. R. 59 [Kemp and Glover,]]. April 27, 1867.]

CASE of perjury by females in which the majority of the Court refused to reduce the punishment.—QUEEN v. BISHOO BEWA, 7 W. R. 66. [Kemp, Seton-Karr, and Glover, JJ. May 7, 1867.]

A SENTENCE of 24 hours' imprisonment for giving false evidence was held to be quite inadequate.—QUEEN v HOSSAIN ALI, 8 B. L. R., Ap., 25. [Ainslie, J. Aug. 15, 1871.]

UNDER S. 193 of the Penal Code, it is obligatory upon the Court, in every case of conviction under that section, to pass some sentence of imprisonment.—EMPRESS v. KHODAI SINGH, 3 C. L. R. 527. [Jackson, Markby, and Prinsep, JJ. July 29, 1878.]

Where the accused, who was a head-constable, was found guilty of making a false charge under s. 211, and of giving false evidence under s. 193 of the Penal Code, and the Sessions Judge passed sentences of three months' simple imprisonment for each offence, and, taking into consideration the accused's past conduct, directed that the sentences should run concurrently, held that the sentences were inadequate and illegal. Accordingly, the sentences were enhanced to three months' rigorous imprisonment for each offence; and, as the two offences were distinct, the High Court directed, under s. 35 of the Criminal Procedure Code (Act X. of 1882), one sentence to commence after the expiration of the other. Queen v. Abdool Asees (7 W. R. 59) followed—Queen Empress v. Pir Mahomed, I. L. R., 10 Bom. 254. [Birdwood and Jardine, JJ. Dec. 10, 1885]

SANCTION TO PROSECUTE FOR GIVING FALSE EVIDENCE.

The discretion vested in a Civil Court of sanctioning a criminal charge of perjury is one that should be most carefully exercised. Remarks on the present case, in which the discretion was improperly exercised.—Queen v. Poosa Ram, 6 W. R. 11. Jackson and Markby, J. June 25, 1866.

A GENERAL sanction by a Judge to a prosecution for giving false evidence under 193 of the Penal Code, and for false verification, is not sufficient. The exact words upon

than

which the prosecution is based, and the exact offences which the Magistrate is to investigate, should be pointed out. The verification of an application filed in the Civil Court, in which it was stated that the applicant did not sign an alleged deed of compromise, does not subject him to punishment for giving false evidence. Such an application falls, not under s. 120, Act VIII. of 1859, but under s. 209 of that e.c.t, and need not, therefore, be verified. Documents which were tendered in the civil suit, if relied on in a prosecution for giving false evidence, must be proved in the Criminal Court before they can be received as evidence.—Queen v. Kartick Chunder Haldar, 9 W. R. 58. [Kemp and Jackson, J. April 14, 1868.]

Where the sanction to a prosecution accorded under s. 169, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 195, new Code of Criminal Procedure (Act X. of 1882), extended only to one of the persons charged, the High Court quashed the commitment, and directed the discharge of the persons to whom the sanction did not apply.—Queen v. Woodurnul Singh, 10 W. R. 24A. [Phear and Hobhouse,]]. Aug. 4, 1868.]

THE Civil Court, in giving permission to prosecute, should, in a case of forger?, state distinctly what the document is for which a prosecution is to be entertained. The particular act or acts of forgery, and, in a case of perjury, the particular words which constitute the perjury, should be specified.—Reference in the Case of Gobind Chunder Ghose, 10 W. R. 41; 7 B. L. R. 28n. []ackson and Hobbouse, JJ. Sep. 11, 1863.]

THE sanction accorded by a Civil Court in a case under s. 193, Penal Code, need not be more specific than a general sanction to prosecute for any false statement contained in the two depositions given.—QUEEN v. KADIR BUX alias KADIR MAHOMED, II W. R. 17. [Jackson and Markby, JJ. Mar. 4, 1869.] But see s. 195, Code of Criminal Procedure (Act X. of 1882), infra, p. 199.

WHERE the Magistrate, before whom a witness gives false evidence, himself commits such witness for trial, his sanction of the prosecution will be implied.—Reg. v. Muhammad Khan valad Imam Khan, 6 Bom. H. C. R. 54. [Warden and Lloyd, JJ. Aug. 26, 1869.]

S. 167 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882), requires that sanction to prosecutions therein mentioned shall be given before any such prosecution is commenced. Until the sanction is obtained, the tribunal by which the offence is triable has no jurisdiction, and a conviction founded on evidence taken without such sanction would be had. Where a complainant charged a person, who was one of the public servants mentioned is s. 167 of the Criminal Procedure Code, with committing acts which, if committed by a private individual, would have constituted the offence of extortion, it was held that it was not illegal to treat the charge as a charge of extortion, and to proceed with the trial without sanction for the prosecution.—Reg. v. Parshram Keshav, 7 Bom. H. C. R. 61. [Gibbs and Malvill,]]. July 28, 1870.]

An application under s. 169 of the Criminal Procedure Code (Act XXV. of 1861) corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882) praying for sanction to institute a prosecution on a charge of perjury, should, as a general rule, be first made to the Court before which the perjury is alleged to have been committed.—In re Rajah of Venkatageri, 6 Mad H. C. R. 92. [Scotland, C.J., and Holloway, J. Feb. 27, 1871.]

WHERE sanction under s. 170 of the Code of Criminal Procedure (Act XXV. 1861), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1881 to prosecute a person criminally for fabricating false evidence, was not given, it wheld that the error was not cured by s. 426 of that Code (or s. 537 of the new Code), at the person charged was ordered to be discharged. The sanction given by the Sessiol Judge, after the case was committed to him, and the prisoner had pleaded to the chargis not a sanction contemplated by the law.—Queen v. Mohima Chunder Chucks Butty, 15 W. R. 45; 7 B. L. R. 26. [Loch and Macpherson, J]. Mar. 25, 1871.]

ALTHOUGH the averment on the record of a Magistrate by whom a prisoner is trice that the accused, before making a confession, was warned that it was optional with his to answer the questions put to him or not, is, on appeal, conclusive as to the fact of such a warning having been given; it is not conclusive to show that such a confession has a been made under the influence of fear engendered by previous maltreatment, or is a

erdise valueless. Allegations, made in a regular and proper manner before a Sessions mrt on appeal, that a confession made by the accused before the Magistrate who tried case was made under such circumstances as to preclude its admissibility in, or diminits value as, evidence, should receive due attention, and be inquired into. A Sessions urt, refusing to make such inquiry, commits a grave error in law and procedure. Upon inquiry which the High Court directed the Sessions Judge to make into such an alletion, the prisoners were ordered to be, and were solemnly affirmed, and the prosecution hither objected to the form of the order, nor to the affirmation of the prisoners, and moreper cross-examined them, but objected to their evidence being used upon the return of e inquiry. It was held that the objection, though possibly good if taken in time, was plate, and that the evidence of the prisoners might be used, whether the order directing on to be affirmed was correct or otherwise. Where, during such an inquiry, the Sesms Judge accorded his sanction to the prosecution for perjury of some of the witnesses o deposed on behalf of the prisoners, the High Court considered such a proceeding imopes, and eminently calculated to defeat the object of the inquiry. Semble.—A person most be convicted, under s. 201 of the Penal Code, of causing evidence of the commisof an offence by himself to disappear, nor can he be convicted of the abetment of th an act (per Lloyd and Kemball, JJ.) Question, as to the extent of the privilege of ech accorded to counsel and advocates, considered. Important statements, made in rified petitions to the High Court, if untrue, should be contradicted on affidavit. Apintment of the Magistrate, who, in the first instance, had tried and convicted the accused, be Crown prosecutor to conduct an inquiry subsequently directed in the same case, asured as being unprecedented and objectionable. A public prosecutor should be witha personal interest in the cases which he conducts. Prisoners should be allowed to **se free converse with their vakils out of the hearing of the police-officers in charge of such** isoners. It is undesirable that Magistrates whose decisions are under appeal, or who we been engaged in promoting the prosecution, or police-officers concerned in a case, buld sit on the bench beside, or converse privately in Court with, the Judge who is enged in trying the prisoners' appeal. If the Appellate Judge wishes to ascertain any facts atting to the case from the Magistrate who convicted the accused, he should examine the gistrate upon oath or solemn affirmation in the same manner as an ordinary witness.—3 16. c. Kashinath Dinkur, 8 Bom. H. C. R. 126. [Westropp, C.J., and Lloyd, olvill, Green, and Kemball, JJ. April 12, 1871.]

Sanction for the prosecution of the accused was accorded by an Assistant Sessions age in the following terms: "There is no doubt whatever that Tai, Baji, Bala, these persons, made before me certain statements contradictory of the statements which y had made before the committing Magistrate. Therefore, if, from such statements of hirs, they may be liable to any charge, there is sanction from here" (i.e., I give my sanction) "for their prosecution." Held that this gave sufficient sanction for the prosecution the accused under s. 193 of the Penal Code, and that it is not necessary that the authorigiving the sanction should specify the particular section of the Penal Code under which accused is permitted to be prosecuted.—REG. v. Tai, wife of Nanchand, 8 Bom. H. R. 24. [Westropp, C.]., and Gibbs, Melvill, and Kemball, JJ. April 26, 1871.] But Yadurath Hasra.v. Annoda Prosad Sircar, 11 C. L. R. 53, infra, p. 195, and s. 195, et X. of 1882, p. 199, infra.

WHERE a Civil Court, by letter to a Subordinate Magistrate with committing powers, two sanction for the prosecution of the accused under ss. 463 and 471 of the Penal Code making and using a false document), and where the Magistrate, in committing the accessed for trial, in addition to framing a charge under these sections, added a head of mage under s. 193 (giving false evidence), it was held that the Magistrate had no jurisletion to commit the accused for trial on the last-mentioned head of charge.—Reg. v. Ubil Sani, 8 Bom. H. C. R. 28. [Westropp, C.J., and Lloyd, J. April 27, 1871.]

A CIVIL COURT has no power to make an order sanctioning a prosecution for an Bence committed before the Court of the Principal Sadr Ameen on the small-cause side, at Court not being subordinate to the Civil Court.—Ex-parte MAHALINGAIYAN, 6 Mad. C. R. 191. [Scotland, C.]., and Kindersley, J. May 3, 1871.]

THE words of s. 191 of the Penal Code are very general, and do not contain any mitation that the false statement made shall have any bearing upon the matter in issue, is sufficient to bring a case within that section if the false evidence is intentionally given, at is to say, if the person making the statement makes it advisedly, knowing it to be supposed that

that which he states is true. The object of the sanction required by s. 169, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s 195, new Code of Criminal Procedure (Act XXV. of 1882), is to ensure that the prosecution should be instituted after due consideration on the part of the Court before whom the false evidence was given, or on the part of a Court to which such Court is subordinate. When a Magistrate perused the papers of a case which had been forwarded to him by a Subordinate Magistrate for consideration, and then sent on the papers to the District Superintendent of Police with an opinion adverse to the prisoner, and the District Superintendent of Police requested the Magistrate to issue a warrant against the prisoner, charging him with giving false evidence, it was held that the issue of the warrant was a sufficient sanction under s. 169, on the part of the Magistrate.—QUEEN v. MAHOMED HOSSAIN, 16 W. R. 37. [Macpherson and Ainslie,]]. Aug. 4, 1871.]

A Sessions Judge has no authority under the law to interfere with the order of a Magistrate allowing a prosecution for false evidence.—GOPAL MOZUMDAR v. HURRO SOCKERRY BOISTOMEE, 16 W. R. 59; 8 B. L. R., Ap., 20. [Jackson and Glover, JJ. Nov. 23, 1871]

It would be very undesirable for the High Court, except under very peculiar creamstances, to entertain, in the first instance, an application to authorize a prosecution for perjury.—In the Matter of Sheeb Pershad Chuckerbutty, 17 W. R. 46. [Bayley and Markby,]]. Mar. 23, 1872.]

Where the Judicial Commissioner of Assam, sitting as Sessions Judge, certified in his capacity of Judge of the Chief Civil Court in Assam that a charge of false evidence was entertained with the sanction of the District Court of Assam, to which the Court of the Munsif of Debrooghur, before or against which the offence was committed, was subordinate, held that the sanction required by s. 169. Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 195, new Code of Criminal Procedure (Act X. of 1882), had been given —BAPOORAM AHAM v. GUNGA RAM KACHAREE, 17 W. R. 54. [Couch, C.J., and Ainslie. J. April 22, 1872.]

The commitment of certain persons charged, under s. 193, Penal Code, with intentionally giving false evidence in a judicial proceeding, was held to be illegal, inasmuch as the sanction of neither the Court before or against which the offence was committed, nor of some other to which such Court is subordinate, was given. It is not necessary to constitute the offence of abetment that the act abetted should be committed.—Reference in the Case of Dinonath Burooa, 18 W. R. 32. [Kemp and Glover, JJ. July 24, 1872.]

A SUBORDINATE MAGISTRATE refused to grant sanction for a prosecution on the sale ground that the perjury was alleged to have been committed before his predecessor in office. Held that the Subordinate Magistrate was wrong in his construction of the section. The Court before which the perjury is alleged to have been committed is to give the permission. The change of incumbent leaves it still the same Court.—Pro., Nov. 12, 1872, 7 Mad. H. C. R., Ap., 12.

The words, "such sanction may be given at any time," in s. 169, Criminal Procedure Code (Act XXV. of 1861), must be construed reasonably, and "any time" means a time which does not unduly prejudice the party to be prosecuted, or put him in a worse position than he was before. No appeal lies against a Judge's order sanctioning such prosecution:—SITARAM SAHOO v. RAI BABU SHEW GOLAM SAHOO BAHADOOR, 18 W. R. 62. [Glover and Pontifex, J]. Nov. 13, 1872.] But, under s. 195 of the new Code of Criminal Procedure (Act X. of 1882), no Court shall take cognizance of an offence punishable under s. 193 of the Penal Code, unless sanction has been previously obtained.

When it is intended to charge a person with having made a false statement in the Court of a Magistrate, or (alternatively) a false statement in the Court of a Subordinate Judge, there must be a proper sanction for a prosecution on each branch of the alternative. A sanction for a prosecution must designate the Court where the false statement was alleged to have been made, and the occasion on which it was committed. It is desirable, if not necessary, that in the sanction for prosecution the description of the offence intended to be prosecuted should be stated in general terms, although details may be omitted.

—In re Ballaji Sitaram, 11 Bom. H. C. R. 34. [West and Nanabhai Haridas, JJ. Mar. 18, 1874.]

In a case in which the High Court was asked to sanction a prosecution for giving false evidence of a plaintiff in a suit before a Small Cause Court, which Court had refused such leave to defendant, it was held that the High Court would not be justified in exercis-

mg the discretion vested in them, unless it appeared very clearly that there were strong rounds for granting the sanction.—Money Mohun Dey v. Dinonath Mullick, 22 W. R. II. [Kemp and Birch, J]. April 28, 1874.]

THE Court declined in this case to say that a conviction was bad, because the Judge, the tried the case, and the Judge who sanctioned the criminal proceedings, was the ame.—Queen v. Subal Chunder Gangooly, 22 W. R. 16. [Markby and Mitter, JJ. May 18, 1874.]

As soon as it becomes apparent that a complaint is of an offence falling within s. 468 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 195 of the ww Code of Criminal Procedure (Act X. of 1882), and that it is made without sanction, he Magistrate is not competent to entertain it.—Pro., Feb. 16, 1875, 8 Mad. H. C. R., Ap., 2.

HELD that the sanction referred to in ss. 468 and 469 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882), when given by any of the Courts empowered under the Act. cannot be disturbed by a superior Court. Per Turner, Offg. C.J., and Pearson and Oldfield, JJs: When sanction is refused by one of the Courts, the refusal does not derive the other Courts of the discretion given to them. Per Spankie, J.: When sanction refused by one of the Courts, the refusal does not deprive the superior Courts of the discretion given to them.—BARKATULLAH KHAN v. RENNIE, I. L. R., I All. 17. [Turner, Offg. C.J., and Pearson, Spankie, and Oldfield, JJ. July 3, 1875.]

A CONVICTION having been set aside as arrived at without jurisdiction, no sanction to the prosecution having been obtained from the Court against which the offence was committed, formal sanction was obtained, the accused re-arrested, and, without being called upon to plead, ordered to undergo the sentence previously passed. Held that the whole of these proceedings were illegal.—IN THE MATTER OF EDOO KHANSAMAH, 24 W. R. 64. Kemp and Glover, JJ. Nov. 9, 1875.]

In 1872, P and two others obtained a decree against S in the Bombay Court of Small. Causes. For the enforcement of this decree, they presented to the District Judge of Thana an application in the form prescribed by s. 212 of the Code of Civil Procedure, alleging that the judgment-debtor had two salt-pans at Trombay, in the Thana district. The application is the contract of the code of th Procedure Code or under Act IX. of 1850. The Judge entrusted the application for exeration to the Subordinate Judge, who ordered an attachment and sale of these salt-pans. In the course of the proceedings which followed, the Subordinate and District Judges considered that J N had given and fabricated false evidence. On the 25th October 1875, the District Judge gave his sanction for the prosecution of J N and others. J N prayed the High Court to annul the sanction, alleging in his petition that the proceedings before the Subordinate Judge were, ab initio, coram non judice, as he had no authority to attach and sell immoveable property in execution of a decree of the Bombay Court of Small Causes. Held that, although the Court of Small Causes at Bombay has power to enforce is decree against moveable property only, yet, if that decree be transmitted to a Court to which the Code of Civil Procedure applies, the latter can, under s. 287 of that Code, enough the decree of a Small Cause Court under s. 78 of Act IX. of 1850 could enforce it against immoveable property? Held also, that the District Judge was quite within his province in giving his sanction to the prosecution. In Reg. v Hayat Bibee (unreported), West and Nanabhai Haridas, JJ., held that the High Court had no authority to interfere with the disretion to grant a sanction for prosecution, even in a case in which the High Court would not have granted the sanction itself. See also on this subject Barkatullah v. Rennie I.L. R., 1 All. 17. [But see s. 195, Code of Criminal Procedure, 1882, p. 199, infra.]—In the Jacijvan Nanabhai, I. L. R., 1 Bom. 82. [West and Nanabhai Haridas, J]. Jan. 19, 1876.

Where the High Court sanctions a prosecution for perjury, it is implied that the proper legal procedure will be adopted, and the proceedings instituted in a Court having prisdiction to entertain the charge.—Keerut Singh v. Narain Parsee, 25 W. R. 14. Glover and Mitter, JJ. Jan. 21, 1876.]

For the purposes of s. 498 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882), a Magistrate of the first class is subordinate to the Magistrate of the district. A sanction given by the latter to prosecute a person for intentionally giving false evidence before the former is therefore legal and sufficient, notwithstanding the refusal by the former to give such

sanction himself. Semble.—That the Sessions Court has not power to give such sanction.— IMPERATRIX v. PADMANABH PAI, I. L. R., 2 Bom. 384. [Melvill and Pinhey, JJ. Oct. 4, 1877.]

S. 466 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 197 of the new Code of Criminal Procedure (Act X. of 1882), extends to all acts ostensibly done by a public servant, i. e., to acts which would have no special signification, except as acts done by a public servant; therefore, a mahalkari, charged with fabricating the proceedings of a case decided before himself, could not be tried on that charge, except with the sanction specified in that section. Para. 1 of s. 466, which mentions a sanction by Government or its deputy, is intended to apply, at least chiefly, to the cases of persons specially responsible to Government, such as accountants who have failed in their duty; and para. 2, which speaks of sanction by Government alone to persons professing to exercise certain authority, and with that pretext doing an act which is impeached by a subject, on the ground of its being wholly unwarranted, or of an excess or impropriety of some kind. A mahal-tion for his prosecution by the District Magistrate is therefore sufficient. tion for his prosecution by the District Magistrate is therefore sufficient. For the purpose of sanctioning a criminal prosecution under s. 468 of the Code of Criminal Procedure IAC X. of 1872), corresponding with s. 195 of the new Code of Criminal Brocedure (Act X. of 1882), the Court of the Subordinate Judge is subordinate to that of the District Judge, notwithstanding that the subject matter of the litigation in the former Court involves more than Rs. 5,000, and an appeal lies direct to the High Court from the decision of that Court in that matter. A prosecution commences when a complaint is made, the reception of the complaint being a stage of the judicial proceedings towards conviction.—IMPERATRIX #. LAKSHMAN SAKHARAM, I. L. R., 2 Bom. 481. [West and Pinhey, J]. Dec. 20, 1877.]

Held (Oldfield, J., dissenting) that, for the purpose of s. 468 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882), a Magistrate of the first class is subordinate to the Magistrate of the district, and consequently application for sanction to prosecute a person for intentionally giving false evidence before the former may, where such sanction is refused by the former, be made to the latter, and not to the Court of Session, which has not power to give such sanction.—In the Matter of Gur Dayal, I. L. R., 2 All. 205. [Stuart, C.]., and Pearson, Spankie, and Oldfield, JJ. Mar. 27, 1879.]

L MADE a complaint against S by petition, in which he only charged S of having committed offences punishable under ss. 193 and 218 of the Penal Code, but in which he also accused S of acts which, if the accusation had been true, would have amounted to an offence punishable, under s. 466 of that Code, with seven years' imprisonment. The Magistrate inquired into the charges against S under ss. 193 and 218 of the Penal Code, and directed his discharge. L then applied to the Court of Session to direct S to be committed for trial, on the ground that he had been improperly discharged, which the Court of Session did. and S was committed for trial charged under s. 218 of the Code, and was acquitted by the Court of Session. The Court of Session then, under s. 472 of Act X. of 1872 (corresponding with s. 477 of Act X. of 1882), charged L with offences punishable under as. 193, 195, 211, and 211 and 109 of the Penal Code, and committed him for trial. Held that such commitment was not bad by reason that an offence under s. 193 of the Penal Code is not exclusively triable by a Court of Session. Held also, per Stuart, C.J. (Spankie, J., doubting). That the High Court is competent, in the exercise of its power of revision enders. 297 of Act X. of 1872 (corresponding with s. 439 of Act X. of 1882), to quash a commitment made by a Court of Session under the provisions of s. 472 of that Act (or a. 477 of the Act of 1882). Held also, per Spankie, J.—That the Court of Session was competent. notwithstanding that L had only charged S with offences under ss. 193 and 218 of the Penal Code, to charge L with offences under ss. 195 and 211, if such offences had come under i cognizance.—Empress v. Lachman Singh, I. L. R., 2 All 398. [Stuart, C.]., and Spanki June Pt, 1879.]

A PERSON who makes, a false statement upon oath before a police-patel acting und s. 13 of Bom. Act VIII. of 1867 gives false evidence within the meaning of s. 193 of t Penal Code, and is punishable under s. 193; but his trial for that offence requires no san tion, a police-patel not being a Criminal Court within the definition of s. 4 of the Cod of Criminal Procedure (Act X. of 1872), corresponding with s. 6 of the new Code of Criminal Procedure (Act X. of 1882), although offences under ch. 10 of the Penal Code, committed before the same officer, cannot be tried without a sanction.—IMPERATRIX V. IRRAGEN I. L. R., 4 Bom. 479. [M. Melvill and F. D. Melvill, JJ. April 29, 1880.]

An instruction to the Magistrate of the district by the Court of Session, contained in the concluding sentence of its judgment in a case tried by it to prosecute a person for

giving false evidence before it in such case, does not amount to sanction to a prosecution of such person for such offence within the meaning of s. 468 of Act X. of 1872 (correspondi g with s. 195 of Act X. of 1882), that section (468) supposing a complaint, or at least an application for sanction for a complaint. Where a Court thinks that there is sufficient ground for inquiring into a charge mentioned in s. 467, 468, or 469 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882), it should proceed under s. 471 of that Act for s. 476 of the new Act). Attention of the Court of Session in this case directed to Queen v. Baijoo Lal (I. L. R., 1 Cal. 450).—EMPRESS v. GOBARDHAN D.s, I. L. R., 3 All. 62. [Pearson, J.* June 26, 1880.]

THE Courts that have jurisdiction to grant a sanction to proceedings under s. 468 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882) are the Court before which the offence was alleged to have been committed, and the Courts to which such Court is subordinate. Per Garth, C.J.: Where a case is settled without evidence being gone into, the Court in which the suit was brought, even if it have power to sanction criminal proceedings against any of the parties to such suit under s. 468 of A& X. of 1872 (corresponding with s. 195 of Act X. of 1882), is guilty of great impropriety and discretion in so doing, inasmuch as it can have had no opportunity of judging of the bona fides of the claim or defence. Semble.—A petition presented under Reg. XVII. of 1860, not requiring verification, cannot, from the fact of its being verified unnecessarily, be made the subject of a prosecution for giving false evidence.-In the Matter of Kasi Chunder Mozum-DAR: JUGGUT CHUNDER MOZUMDAR v. KASI CHUNDER MOZUMDAR, I. L. R., 6 Cal. 440; 7 C. L. R. 330. [Garth, C.J., and Maclean, J. Sep. 29, 1880.]

THE Mamlatdar's Court, constituted by Bom. Act III. of 1876, is a Civil Court within the meaning of s. 468 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 195 of the new Code of Criminal Procedure (A& X. of 1882). Therefore a complaint of an offence mentioned in that section, when such offence is committed before or against the Mamlatdar's Court, shall not be entertained in the Criminal Courts, except with the sanction of the Mamlatdar's Court, or of the High Court to which it is subordinate. - In re SAVANTA, I. L. R., 5 Bom. 137. [Kemball and Melvill, J]. Sep. 1880.]

On an application to a Munsif for sanction to prosecute, the following order was made upon the petition: "If the petitioner thinks there is sufficient evidence against A, I have no objection to give such sanction." Held that the order was not a sufficient sanction to support a prosecution.- JADUNATH HAZRA v. ANNODA PROSAD SIRCAR, 11 C. L. R. 53. [Prinsep and O'Kinealy, JJ. May 22, 1882.]

WHEN a Sessions Judge on appeal annuls the conviction of a Magistrate for want of jurisdiction, and omits to order a re-trial at the time under s. 284 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 423 of the new Code of Criminal Procedure (Act X. of 1882), he is not precluded, by virtue of s. 464 of the Code of 1872 (or s. 3674). of the Code of 1882), from passing such an order subsequently. The order annulling the conviction in such a case does not amount to an acquittal. Where sanction is given for a prosecution for perjury, and the case tried by an incompetent Court, and the conviction quashed on appeal, a competent Court may re-try the prisoner upon the subsisting sanc- (2) tion without any order of the Appellate Court by whom the conviction is quashed. evidence of a witness, given in a proceeding pronounced to be coram non judice, cannot (3) be used under s. 33 of the Evidence Act, if the witness is dead, on a re-trial before a competent Court. R charged A with breach of trust, and S gave evidence in support of the charge. A being acquitted, R was tried for making a false charge and S for perjury. Held (1) that the depositions given by witnesses in the first case could be used against R in the second case, but not against S, under s. 33, Evidence Act; (2) that the word "questions" in s. 33 does not mean "all the questions," and that, though additional issues were involved in the second trial, yet the evidence as to the issues common to both trials was properly admitted at the second trial against R.—In re RAMI REDDI, I. L. R., 3 Mad. 48. and Muttusami Ayyar, JJ. May 2, 1881.]

It is competent for a Court which has granted sanction to a prosecution under s. 195 of the Criminal Procedure Code to give a fresh sanction, if the one previously granted has expired by efflux of time. The limitation of six months mentioned in s. 195 means that a Magistrate shall not take cognizance of a case under a sanction which is more than six . months old, not that the whole prosecution must be completed within that period. Held therefore, where sanction to a prosecution had been granted under s. 195, and the prosecution had been instituted, and the Magistrate, in consequence of evidence of the complainant not being procurable, had ordered "the case to be shelved for the present," and the

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complainant, after the six months mentioned in s. 915 had expired, applied to the Magistrate to re-open the proceedings, that it was competent for the Magistrate, having one taken cognizance of the case, and it still remaining on his file undetermined, to take it again at any moment, and proceed with the prosecution without fresh sanction—IN THE MATTER OF GULAB SINGH v. Debi Prosad, I. L. R., 6 Alf. 45. [Straight, Offg. C.] July 28, 1882.]

On an application for sanction to prosecute under s. 468 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882), it is not competent to the Court to go beyond the record in determining whether or not sanction should be granted when the record itself discloses no foundation for the charges. In re Kasi Chunder Mosumdar (I. L. R., 6 Cal. 440) approved.—Zamin DAR OF SIVAGIRI v. QUEEN, I. L. R., 6. Mad. 29. [Innes, Offg. C. J., and Kernan, J. Aug 30, 1882.]

THE Court of an Assistant Collector is not subordinate to that of the Magistate the district within the meaning of s. 195 of the Criminal Procedure Code. Same prosecution granted under s. 195 should specify the Court or other place in which, and the occasion on which, the offence was committed, and such sanction should not be grants without a preliminary inquiry, where such inquiry is "necessary" within the meaning of s. 476 of the Code. Where sanction to the prosecution of a person for the offence of us certain evidence known to be false was granted by a Court to which the Court in which such evidence was used was not subordinate, and such sanction did not specify the place in which, and the occasion on which, such offence was committed, and the Court granting the sanction did not make any preliminary inquiry, although such an inquiry was " neces sary," in the sense of s. 476 of the Criminal Procedure Code, held that the indispensable preliminary conditions of s. 195 of the Code being wanting to the prosecution, the committing Magistrate was incompetent to entertain the case, and the commitment was illegal and should be quashed. Held, also, that the fact that there was not any evidence to connect such person with the use of such false evidence was a defect in law sufficient to justify the quashing of the commitment.—Empress v. Narotam Dass, I. L. R., 6 All. 98. [Tyrell, J. **⊕**ct. 2, 1883.]

In a suit on a bond instituted in the Court of a Munsif, the question whether the defendant had executed the bond or not was referred to arbitration. The arbitration decided that the defendant had not executed the bond, and that it was a forgery. The Munsif dismissed the suit in accordance with the award. The defendant then applied to the Munsif for sanction to prosecute the plaintiff without specifying in his application the offences in respect of which he desired to prosecute. The Munsif granted sanction, merely observing that there were sufficient grounds for sanctioning the prosecution without giving any reasons or specifying the offence or offences in respect of which sanction was granted. Held that the terms in which the Munsif had given his sanction to a prosecution were not sufficiently explicit, and that he should have mentioned the section or sections of the Penal Code under which he authorized criminal proceedings to be taken, as also in a general way the offence or offences to be charged, the date of commission, and the place where committed. Further that, as the Munsif himself had not determined the question of forgery in the suit, he should have made some inquiry to satisfy himself that there were materials to justify a prosecution.—In the Matter of Parsotam Lal s. Bijai, I. L. R., 6 All. 101. [Straight, J. Oct. 23, 1883.]

A SANCTION to a prosecution for giving false evidence, granted under s. 195 of the Criminal Procedure Code, should specify the place where, and the time when, the alleged false evidence was given, and in substance the assignments of perjury, as also the sections of the Penal Code under which proceedings are authorized.—IN THE MATTER OF HARDIAL v. DURGA PRASAD, I. L. R., 8 All. 105. [Straight, J. Oct. 27, 1883.]

BEFORE granting a sanction to prosecute under s. 195 of the Code of Criminal Procedure, a Court is bound to satisfy itself that an offence has been committed; but it is not bound to hold any inquiry as to all the persons who may be implicated in such offence.

—In re Govindan, I. L. R., 7 Mad. 224. [Hutchins, J. Dec. 18, 1883.]

A DISTRICT COURT has jurisdiction, under s. 195 of the Code of Criminal Procedure, to revoke or grant a sanction granted or refused by a Subordinate Judge's Court.—VENKATA v. MUTTUSAMI, I. L. R., 7 Mad. 314. [Turner, C.J., and Brandt,]. Feb. 12, 1884]

A Sub-divisional Magistrate, after perusing the calendar of a case tried by a Magistrate subordinate to him, sent for the record, and passed an order under s. 195 of the

de of Criminal Procedure, sanctioning the prosecution of a witness in the case for pery. Held that the order was illegal.—Queen-Empress v. Kuppu, I. L. R., 7 Mad. 560.

A SANCTION to prosecute, when applied for subsequently to the termination of the occedings in course of which the offence is alleged to have been committed, ought not to granted, unless the person against whom the sanction is applied for had had notice of a application, and an opportunity of being heard.—ABBILAKH SINGH v. KHUB LALL, L. R., 10 Cal. 1100. Field and Norris, JJ. Aug. 19, 1884.] But see In the Matter Krishnanund Das, I. L. R., 12 Cal. 58, infra.

SANCTION was granted to prosecute a defendant for forgery and perjury alleged to have encommitted by him in a civil suit which was decided against him on the 22nd August 82. The defendant then preferred an appeal, which was dismissed on the 9th August 83. The plaintiff commenced criminal proceedings against the defendant, under the action, on the 23rd July 1884; but such proceedings having been commenced more than a months after the date of the sanction, the charge was dismissed. The plaintiff then, the 20th August 1884, applied for a fresh sanction, which was granted on the 13th April 85. Held that, assuming that the Munsif who granted the fresh sanction had power to a so, as to which the Court expressed no opinion, such fresh sanction should not have een granted, unless some explanation was given for the omission to commence proceedings within six months; and, as no such explanation was given, or any special grounds hown why a fresh sanction should be given, the Munsif did not exercise a sound discreting in granting such fresh sanction, and consequently his order was set aside.—JOYDEO 1886 F. HARIHAR PERSHAD SINGH, I. L. R., II Cal. 577. [Mitter and Norris, JJ. May 2, 1885.]

On the 2nd August 1884, a Munsif, who was of opinion that, in the course of a suit hich had been tried before him, certain persons had committed offences under ss. 193, in, and 471 of the Penal Code, and that the prosecution of these persons was desirable, tade an order which he described as passed under s. 643 of the Civil Procedure Code, and which he directed that the accused should be sent to the Magistrate, and that the Maistrate should inquire into the matter. In May 1885, upon an application by one of the caused to the District Court to "revoke the sanction for prosecution granted by the lunsif," it was contended that the "sanction" had expired on the 2nd February 1885, nd had ceased to have effect. Held by the Full Bench that the Munsif's order, whether was or was not a sanction, was a sufficient "complaint" within the meaning of s. 195 of Ecriminal Procedure Code, and that the limitation period prescribed by that section as applicable to the case. Per Petheram, C.J., and Straight, J.: That, considering that 43 of the Civil Procedure Code was closely similar to s. 476 of the Criminal Procedure ode, the Munsif's order might be taken as having been passed under the latter section. lso per Petheram, C.J., and Straight, J.—The words in s. 195 of the Criminal Procedure ode, "except with the previous sanction or on the complaint of the public servant constaned," must be read in connection with s. 476, which was enacted with the object of voiding the inconvenience which might be caused if a Munsif, or a Subordinate Judge, a Judge, were obliged to appear before a Magistrate, and make a complaint on oath, ke an ordinary complainant, in order to lay the foundation for a prosecution. mage of s. 476 indicates that, where a Court is acting under s. 195, a complaint in the trict sense of the Code is not required, and that the procedure therein laid down conditutes the "complaint" mentioned in s. 195 .- ISHRI PROSAD v. SHAM LALL, I. L. R., 7 ML 871. [Petheram, C.J., and Straight, Brodhurst, and Tyrrell, JJ. July 4, 1885.]

No notice is necessary to the person against whom it is intended to proceed, before he Court before which the alleged offence has been committed can, under s. 195 of the Triminal Procedure Code, sanction a complaint being made to a Magistrate regarding one the offences specified in that section.—In the MATTER OF KRISHNANUND DAS: KRISHNUND DAS v. HARI BERA, I. L. R., 12 Cal. 58. [Pigot and O'Kineally, JJ. Sep. 22, 185.] But see Abbilakh Singh v. Khub Lall, I. L. R., 10 Cal. 1100, infra, p. 200.

In cases, not of the kind contemplated in s. 337 of the Criminal Procedure Code (Act X. of 1882), it is not competent to a Magistrate holding a preliminary inquiry to tender a pardon to the accused, or to examine him as a witness. Statements made by the accused in the course of such examination are irrelevant, and, if subsequently retracted, cannot exused against him, or subject him to a prosecution for giving false evidence under s. 193 of the Penal Code (Act XLV. of 1860.). Reg. v. Hanmanta (I. L. R., 1 Bom. 610) followed. When a pardon is legally tendered to the accused under s. 337 of the Criminal Pro-

cedure Code (Act X. of 1882), and the accused makes a statement on oath which he retracts in a subsequent judicial proceeding, a proper sanction is necessary for a prosecution for giving false evidence on each branch of the alternative charges. In re Balaji Sitanem (II Bom. H. C. R. 34) followed. Such sanction can only be granted before, and not after, the commencement of the prosecution.—QUEEN-EMPRESS v. D. L. A. JIVA, I. L. R., 10 Bom. 150. [Birdwood and Jardine. JJ. Dec. 10, 1885.]

A POLICE-CONSTABLE taking down a statement under s. 161 of the Criminal Procedure Code is not a Judge, nor is the place where he officiates a Court. His sanction is, therefore, not necessary, under s. 195 of the Criminal Procedure Code, to a prosecution for a false statement made to him, whether the charge be framed singly or alternatively.—QUEEN-EMPRESS v. ISMAL valad FATARU, I. L. R., 11 Bom. 659. [West and Birdwood, J]. April 5, 1887.]

S. 195 of the Criminal Procedure Code (Act X. of 1882) distinguishes between the sanction granted by a Court to a prosecution by a private individual and a complaint made by the Court itself. A superior Court, to which such Court is subordinate, made the sanction granted in the former case to the private prosecution, but it has no power in the latter case to set aside a complaint duly made by a subordinate Court.—Question Empress v. Rachappa, I. L. R., 13 Bom. 109. [Birdwood and Parsons, JJ. 1888.]

A CIVIL COURT granted sanction under s. 195 of the Code of Criminal Procedure to the defendant in a suit to prosecute certain witnesses for perjury. The defendant died without having preferred a complaint. His brother, thereupon, preferred a complaint, and the Magistrate dismissed it under s. 253 of the Code of Criminal Procedure, on the ground that the sanction died with the defendant. The Sessions Judge held that the sanction was alive, and directed the District Magistrate to make further inquiry under s. 437. Held that the Sessions Judge was right.—In re Thathayya, I. L. R., 12 Mad. 47. [Colling C.J., and Parker, J. Sep. 5, 1888.]

It is competent for a Civil Court before which a case may have been settled without any evidence being gone into, and which has grounds for supposing the offence of the nature referred to in s. 195 of the Code of Criminal Procedure has been committed he fore it during the pendency of such case, to make a preliminary enquiry, and thus satisficient whether a primatifacie case has been made out for granting sanction, and, if so satisfied, to grant sanction for the prosecution of the person alleged to have committed such offence. A sanction granted after such preliminary enquiry, and based thereon, is not illegal. In re Kasi Chunder Mosundar (I. L. R., 6 Cal. 440) and Zamindar of Sangiri v. The Queen (I. L. R., 6 Mad. 29) dissented from on this point.—Shashi Kuma Dey v. Shashi Kuma Dey, I. L. R., 19 Cal. 345. [Norris and Beverley, J]. Jan. 27, 1892.]

A REGISTRAR, acting under the Registration Act, ss. 72-75, is a Court for the purpose of the Criminal Procedure Code, s. 195.—ATCHAYYA v. GANGAYYA, I. L. R., 15 Mad. 13 [Collins, C.J., and Muttusami Ayyar, Parker, and Shephard, JJ. Jan. 22, Oct. 13 1891; Jan. 8, 1892.]

The proceeding under s. 195 of the Code of Criminal Procedure, by which an orde granting or refusing to grant sanction to prosecute may be set aside, is a proceeding a revision, and not by way of appeal — Mehdi Hasan v. Tota Ram, I. L. R., 15 All Gi [Knox, J. Nov. 19, 1892.]

THE High Court has jurisdiction to interpose in the case of an order made by a Communder s. 476 of the Criminal Procedure Code, and has also the power-to-determine whethis the discretion given by that section has or has not been properly exercised. In the Matter of the Petition of Khepu Nath Sikdar v. Girish Chunder Mukerjee (I. L. R., 16 Cal. 730 relied on.—Chaudhari Mahomed Izharul Huq v. Queen-Empress, I. L. R., 20 Cal. 349 [Pigot and Rampini, JJ. Aug. 10, 1892.]

THE Bengal Tenancy Act does not authorize a proceeding calling upon a parson is show cause why he should not make over documents and papers belonging to an estate of which a common manager has been appointed. A person giving false evidence in such proceeding cannot be convicted under s. 193 or s. 199 of the Penal Code.—About. Major S. KRISHNA LAL NAG, I. L. R., 20 Cal. 724. [Trevelyan and Rampini, JJ. April 13 1893.]

S. 195 of the Criminal Procedure Code (Act X. of 1882) runs as follows :-

No Court shall take cognizance-

(a) of any offence punishable under ss. 172 to 188 (both inclusive) of the Indian Penal de, except with the previous sanction, or on the complaint, of the public servant conmed, or of some public servant to whom he is subordinate;

(b) of any offence punishable under s. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 210, 211, or 228 of the same Code, when such offence is committed in, or in relation any proceeding in any Court, except with the previous sanction, or on the complaint, such Court, or of some other Court to which such Court is subordinate;

(c) of any offence described in s. 463, or punishable under s. 471, 475, or 476 of the me Code, when such offence has been committed by a party to any proceeding in any ourt, in respect of a document given in evidence in such proceeding, except with the presanction, or on the complaint of such Court, or of some other Court to which such ourt is subordinate.

The sanction, referred to in this section, may be expressed in general terms, and need name the accused person; but it shall, so far as practicable, specify the Court or other ace in which, and the occasion on which, the offence was committed.

When sanction is given in respect of any offence referred to in this section, the Court, king cognizance of the case, may frame a charge of any other offence so referred to which disclosed by the facts.

Any sanction, given or refused under this section, may be revoked or granted by any hority to which the authority giving or refusing it is subordinate; and no such sanction Il remain in force for more than six months from the date on which it was given.

For the purposes of this section, every Court, other than a Court of Small Causes, all be deemed to be subordinate only to the Court to which appeals from the former ourt ordinarily lie.

The Courts of Small Causes in the presidency towns shall be deemed to be subordied to the High Court, and every other Court of Small Causes shall be deemed to be bordinate to the Court of Session for the sessions division within which such Court situate.

TRANSFER OF CASE.

THE High Court does not exercise its powers of transfer in a case of forgery or perry solely on the ground that the Judge who is to try the case has formed an opinion that document has been forged or the perjury committed. But when the transfer can be ade without the risk of any improper interference with the course of justice, and without ach inconvenience to the parties and witnesses, the transfer would be proper, not only a fair concession to the accused person, but as a means of relieving the Judge from a bition which he would himself desire to avoid.—Ex-parte ARUNACHELLA REDDI, 5 Mad. C. R. 212. [Scotland, C.]., and Holloway, J. Mar. 4, 1870.]

194. Whoever gives or fabricates false evidence, intending thereby to Ct. of Ses.

Giving or fabricating false vidence with intent to proure conviction of capital cause, or knowing it to be likely that he will there-Uncog. by cause, any person to be convicted of an offence Warrant. Not bailable. which is capital by this Code "or the law of Eng- Not comp. land," shall be punished with transportation for Sanction.

ife, or with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine;

and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false If innocent person be thereevidence shall be punished either with death or the y convicted and executed. punishment hereinbefore described.

In this section the word "offence" denotes a thing punishable under this Code, or order any special or local law as defined in this Code.—S. 40, Penal Code.

In sections 194 and 195 of the Indian Penal Code, for the words, "by this ode or the law of England," the words, "by the law of British India or England," hould be substituted.—See the Indian Railways Act (IX. of 1890), section 149.

^{*} The words quoted have been inserted by Act XXVII. of 1870, s. 7.

In the trial of a prisoner for murder, a witness stated on oath before the Sessions Cour that another had committed the murder, whereas before the Magistrate he had stated, a was the fact, that the prisoner had committed the murder. Helde that such witness wa guilty under s. 193, and not under s. 194, of the Penal Code, as he did not know that he would cause a conviction for murder.—QUEEN v. HARDYAL, 3B. L. R., A. Cr., 35. [Narman and Jackson, JJ. July 13, 1869.] Followed in Queen v. Mati Khowa, 3 B. L. R., A. Cr. 36; Queen v. Norman, 4 B. L. R., A. Cr., 9.

FACTS showing that an accused person had dug a hole, intending to place salt there in, in order that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding, would justify a conviction for an attempt to fabricate fals evidence.—Queen v. Nunda, 4 N.-W. P. 133. [Turner and Spankie, J]. Aug. 16, 1872

THE prisoner was convicted under s. 195 of the Penal Code of fabricating false evi dence with intent to procure the conviction of a certain person of an offence. The pri soner's act was committed in a most public manner, and was not calculated to lead conviction of the person; nor did it appear that the prisoner took any steps to see conviction. Held that the conviction of the prisoner could not be sustained.—Quest s Shib Dyal, 5 N.-W. P. 188. [Jardine, J. June 7, 1873.]

It is not necessary, under s. 194, Penal Code, that the false evidence which is given should be evidence given in a Court of Justice. Such statement, if made to a police of would amount to the offence of giving false evidence as defined by s. 101 taking s. 118 of the Code into consideration.—QUEEN v. NIM CHAND MOOKERJEE, 20 W. R. 41. [Mark] and Birch, JJ. June 17, 1873.] Overruled by Empress v. Kassim Khan, 8 C. L. R. 200 I. L. R., 7 Cal. 121.

NEITHER the words "shall answer all questions" in s. 118 of the Code of Crimina Procedure, nor the words "shall be bound to answer all questions" in s 119 of the sa Code, constitute "an express provision of the law to state the truth" within the mean ing of s. 191 of the Penal Code. Ss. 118 and 119 are merely intended to oblige to give such information as they can to the police in answer to the questions whi be put to them, and they impose no legal obligation on those persons to speak the truth-EMPRESS v. KASSIM KHAN; and EMPRESS v. MUSSAMUT DAHIA, I. L. R., 7 Cal. 130 8 C. L. R. 300. [Garth, C.J., and Pontifex, Morris, Mitter, and McDonell, JJ. Apri Explained in Nathu Sheikh v. Empress, I. L. R., 10 Cal. 405. Overrule Queen v. Nim Chand Mookerjee, 20 W. R. 41.

A SANCTION to prosecute, when applied for subsequently to the termination of the proceedings in course of which the offence is alleged to have been committed, ought to be granted, unless the person against whom the sanction is applied for had had notice of the application and an opportunity of being heard .-- ABBILAKH SINGH v. KHUB LALL I. L. R, 10 Cal. 1100. [Field and Norris, J]. Aug. 19, 1884.] Referred to and distinguished in Krishnanund Das v. Hari Bera, I. L. R., 12 Cal. 58, supra, p. 197.

A, WITH intent to cause injury to B, falsely accuses him of having committed a offence, knowing that there is no just or lawful ground for such charge. On the trial, i gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under ss. 221 and 194 of the Penal Code.—Crim. Pro. Code (Act X. of 1882), s. 235, ill. f.

Giving or fabricating false evidence with intent to procure conviction of offence pun-

ishable with transportation or

195. Whoever gives or fabricates false evidence, intending thereby t cause, or knowing it to be likely that he will thereb cause, any person to be convicted of an offence which by this Cade to the launt England "* is not capital

but punishable with transportation for life, or impri

imprisonment. 7~1>~ sonment for a term of seven years or upwards, sha be punished as a person convicted of that offence would be liable to be punished

Illustration. A gives false evidence before a Court of Justice, intending thereby to cause Z to b convicted of a dacoity. The punishment of dacoity is transportation for life, or rigor ous imprisonment for a term which may extend to ten years, with or without fine. therefore, is liable to such transportation or imprisonment, with or without fine.

In sections 194 and 195 of the Indian Penal Code, for the words, "by t Code or the law of England," the words, "by the law of British India or England 200 should be substituted.—See the Indian Railways Act (IX. of 1890), section 149

Ct. of Ses. Uncog. Warrant Not bailable. Not comp. Senction.

^{*} The words quoted have been inserted by Act XXVII. of 1870, s. 7.

Ruling.

this section the word "offence" denotes a thing punishable under this Code, or der any special or local law as defined in this Code.—S. 40, Penal Code.

WHERE a man burns his own house, and charges another with the offence of doing he should be convicted and sentenced under s. 211 (and not under s. 195) of the Penal ode.—QUEEN v. BHUGWAN AHIR, 8 W. R. 65. [Loch and Hobbouse, JJ. Aug. 28, 1867.]

196. Whoever corruptly uses, or attempts to use, as true or genuine eviUsing evidence known to be dence, any evidence which he knows to be false or Presy. Mag.,
fabricated, shall be punished in the same manner as class.

The gave or fabricated false evidence.

The provision of the Penal Code (s. 196) against using false evidence is not ordina. According as the intended to apply to subornation of perjury. To establish an offence under s. 196, it offence of most be shown that the accused made some use of the false evidence after it was in exist. evidence is, ov. 24, 1862.]

[Steer and Campbell, JJ. evidence is, bailable or not.

A PERSON who uses in Court false documents as true, besides swearing to their Not compatible thenticity, may be convicted under s. 196 of the Penal Code only, and not under s. 471 Sanction.

So.—QUEEN v. OODUN LALL, 3 W. R. 17. [Glover, J. May 23, 1865.]

Using and attempting to use false evidence are two distinct and separate offences, and hould have been charged in separate heads of the charge. As the above offences are not unishable under s. 193 without the application of s. 196 of the Penal Code, both sections hould have been entered in the charge.—2 W. R., Cr. L., 9, No. 94 of 1865.

Where a prisoner produced as evidence an account-book, one page of which had been radulently abstracted, and another substituted for it, held that he was not guilty of the force of attempting to use, as genuine, fabricated evidence, unless he knew of the forgery, and intended to use the forged evidence, for the purpose of affecting the decision on the purpose when the book was tendered.—Queen v. Muddoo Soodun Shaw, 7 W. R. [Kemp and, Markby,]]. Jan. 26, 1867.

THE offence imputed against an accused, who, in a civil suit, is alleged to have used senuine a document which he knew to be a forged document, is one cognizable under 471 of the Penal Code. Such accused should, therefore, be charged under that section, and not under s. 196 of the Code.—EMPRESS v. KHERODE CHUNDER MOZUMDAR, I. L. R., [al., 17; 8 C. L. R., 118. [lackson and Tottenham,]]. Mar. 2, 1880.]

Where several persons were accused of having given false evidence in the same proceeding, they should be tried separately. A, S, B, D, and P were jointly tried: A, in espect of three receipts for the payments of money, produced by him in evidence in judicial proceeding, on three charges of falsely using as genuine a forged document, and in three charges of using evidence known to be false; S, B, D, and P on charges of giving also evidence in the same judicial proceeding as to such payments. The Court (Straight, being unable to say that the accused persons had not been prejudiced in their defence in having been improperly tried together, set aside the convictions, and ordered a fresh tail of each of the accused separately.—Empress v. Anant Ram, I. L. R., 4 All. 293. Straight, J. Feb. 13, 1882.]

The vendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made his alteration, they used the deed of sale as evidence in a suit. Held that the alteration if the deed did not amount to "forgery" within the meaning of s. 463 of the Penal Code, not could the deed, after the alteration, be designated a "forged document" as contemplated by s. 470, the intention to cause wrongful loss or wrongful gain or to defraud being wanting; nor could it be said that, in using the deed, the vendees were "dishonestly" or tradulently" using as genuine a "forged document," and therefore the use by vendess of the deed did not constitute an offence under s. 471 of the Penal Code. Further, that their use of it did not render them liable to conviction under s. 1950 of that Code.—

EMPRESS T. FATEH, I. L. R., 5 All. 217. [Mahmood, J. Oct. 2, 1882.]

L BROUGHT a suit upon a bond, and at the trial sought to support his claim by a letter bricated probably for the purpose of enabling L to get the bond registered. L was convicted under s. 196 of the Penal Code. Held that, if the letter was fabricated for use

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1st
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SECS. 197-199.]

FALSE EVIDENCE, &c.

[CHAP. XI

before the registrar, it was no valid objection to the conviction.—LAKSHMAJI v. QUEEN-EMPRESS, I. L. R., 7 Mad. 289. [Kindersley and Hutchins, J]. Jan. 18, 1884.]

À is convicted of an offence under s. 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but, if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.—Crim. Pro. Code (Act X. of 1882), s. 232, illus.

A Sessions Judge is not debarred by s. 487 of the Criminal Procedure Code from trying a person for an offence punishable under s. 196 of the Penal Code, when he has as District Judge, given sanction for the prosecution under the provisions of s. 195 of the Code of Criminal Procedure. Madhub Chunder Mosumdar v. Novodeep Chunder Pundit (I. L. R., 16 Cal. 121) overruled. Empress v. D'Silva (I. L. R., 6 Born, 479 referred to.—Queen-Empress v. Sarat Chandra Rakhit, I. L. R., 16 Cal. 766. [Petheram C. J., and Tottenham, Trevelyan, Ghose, and Beverley, JJ. July 15, 1889.]

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

197. Whoever issues or signs any certificate required by law to be given Issuing or signing false or signed, or relating to any fact of which such certificate.

or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

ABETMENT of the issue of a false certificate of summons. Although there was no chaukidar in the village of the name appearing on the receipt acknowledging due service, the prisoner was acquitted in the absence of proof of guilty knowledge or belief, it being probable that he (an utter stranger in the village) was deceived by the villagers.—Queen v. HISSAMUDDEEN, 3 W. R. 37. [Kemp and Seton-Karr, J]. June 27, 1863.]

Accused, a copyist in the Small Cause Court office, framed an incorrect copy of a document filed with a certain record, by adding a name not contained in the original. The incorrect copy was delivered duly certified to one L D, the applicane for it, and who was probably in collusion with the copyist. This copy was afterwards made use of in a suit against the person whose name had been fraudulently added, and then the fraud was detected. The Magistrate convicted accused under s. 167, and ordered him to pay a fine of Rs. 100. Held that s. 167 was not applicable to the case, as it was not shown that accused intended or knew it to be likely that he would cause injury to any person, but that the accused had committed the offence of "issuing or signing a false certificate within the meaning of s. 197. Held also (per Barkley, J.) that making what purports to be a copy of a document is not included in the words "preparation or translation of any document," nor in the words "frames or translates that document," as used in s. 167.—Crown v. Deiva Singh, Panj. Rec., No. 15 of 1879.

UNDER the Burma Steam-boilers and Prime-movers Act (XVIII. of 1882), s. 15, any engineer signing any report under s. 9 of that Act, which he either knows or believes to be false in any material point, shall be deemed to have committed an offence punishable under s. 197 of the Penal Code.

Ditto.

198. Whoever corruptly uses, or attempts to use, any such certificate as a Using as true a certificate true certificate, knowing the same to be false in any known to be false.

material point, shall be punished in the same manner as if he gave false evidence.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp. Sanction.

199. Whoever, in any declaration made or subscribed by him, which defeated a sevidence. Claration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if-he gave false evidence.

[203]

CHAP. XI.

FALSE EVIDENCE, &c.

SECS. 200, 201

A HINDU, who has become a convert to Christianity, is not under a legal obligaion to speak the truth, unless his evidence be given under the sanction of an oath on the Holy Gospels, so as to justify a conviction under s. 193 of the Penal Code. A statement made by a witness in a criminal trial not upon oath or solemn affirmation is not a declaation within the meaning of s. 199 of the Penal Code, nor is the witness bound to make declaration under s. 191.—Inre A. VEDAMUTTU, 4 Mad. H. C. R. 185. [Scotland, C.]., and Ellis, J. Dec. 21, 1868.]

A PETITION not bearing the signature of the accused, and therefore not a declaration, made or subscribed by him, cannot be made the foundation of a charge or conviction uners. 199 of the Penal Code, but a deposition on oath supporting such a petition, if false, ustifies a charge under s. 193 of the Code.—In the Matter of Ram Rewaz Kooer, 7 C. L. R. 536. Garth, C.J., and Maclean, J. Oct. 22, 1880.]

A DEPUTY MAGISTRATE has no power to administer an oath to a person making a dediration in the shape of an affidavit; and such person cannot, on the facts stated in such declaration, he prosecuted for committing an offence either under s. 193 or s. 199 of the Penal Code. —IN THE MATTER OF THE PETITION OF ISWAR CHUNDER GURO, I. L. R., 14 Cal. 653. [Petheram, C.J., and Ghose, J. June 30, 1887.

THE Bengal Tenancy Act does not authorize a proceeding calling upon a person to show cause why he should not make over documents and papers belonging to an estate of which a common manager has been appointed. A person giving false evidence in such proceeding cannot be convicted under s. 193 or s. 199 of the Penal Code.—Abdul. Majid KRISHNA LAL NAG, I. L. R., 20 Cal. 724. Trevelyan and Rampini II. April 13.

200. Whoever corruptly uses or attempts to use as true any such decla- Ct. of Ses., ration, knowing the same to be false in any material Presy. Mag Using as true such declara--point, shall be punished in the same manner as if he or Mag. of ist tion, knowing it to be fa'se. gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the bailable. ground of some informality is a declaration within the meaning of sections 199 Not comp.

201. Whoever, knowing or having reason to believe that an offence has Ct. of Ses. Causing disappearance of evidence of offence, or giv-ng false information to creen offender.

If a capital offence;

been committed, causes any evidence of the com- Uncog. mission of that offence to disappear with the intention Warrant.
of screening the offender from legal punishment.
Bailable. of screening the offender from legal punishment, or Not comp. with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is pun-

ishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and, if the offence is punishable with transportation for life, or with im- Ct. of Ses., If panishable with transport. prisonment which may extend to ten years, shall be Presy. Mag. punished with imprisonment of either description or Mag. of 1st for a term which may extend to three years, and shall also be liable to fine;

and, if the offence is punishable with imprisonment for any term not Presy. Mag., if punishable with less than extending to ten years, shall be punished with imprior Mag. of ist sonment of the description provided for the offence by which often years' imprisonment. for a term which may extend to one-fourth part of the longest term of the fence is triable. imprisonment provided for the offence, or with fine, or with both.

Illustration.

A knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

203

Uncog.

Digitized by Google



Rulings.

In this section the word "offence" has the same meaning when the thing pusishable under the special or local law is punishable under such law with interisonment for a term of six months or upwards, whether with or without fine.—S. 40; Penal Code.

CHARGE.—That you, on or about , at , believing or having reason to believe that an offence punishable with death had been committed, caused evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, and that you have thereby committed an offence punishable, &c.-8 W. R., Cr. L., 7, No. 734 of 1867.

A SESSIONS JUDGE, in his address to the jury during the trial of a prisoner charge with offences under ss. 201, 202, and 203 of the Penal Code, made the following remarks "The two essential points which remain to be proved before a conviction can pass on an of the three sections referred to are, first, the substantial fact of an offence having been committed; and, secondly, the knowledge or reasonable belief on the part of the accused the such was the case: both these are essential parts of the offences specified in the charge against the accused." The High Court pointed out that both these points were not absolutely necessary in order to constitute a legal conviction under s. 201, 202, or 203 of the Penal Code; for, if a person had reason to believe (s. 26) that an offence had been committed, and acted in the manner described in either of those sections, he would be liablet punishment, even although it might subsequently transpire that he was mistaken in his beliefs.—2 W. R., Cr. L., 1, No. 11 of 1865.

A COMMITS no offence, if, in the exercise of the right of private defence of his proper against B, whom he finds near a hole in A's house, and, on being attacked by B, be strike a blow at random and in the dark, with a stick in his hand, whereby B is killed. C an D, by assisting A in removing the body of B, cannot be convicted (under s. 201 of the P nal Code) of having caused evidence to disappear, they having no knowledge or belief the an offence had been committed, nor any intention of screening an offender.—Queent Pelko Nushyo, 2 W. R. 43. [Kemp and Glover, JJ. Mar. 15, 1865.]

PRISONER was present at a murder without being aware that such an act was to be committed. Through fear, he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. Held that he was guilty, not a betment of murder, but causing the disappearance of evidence of a crime under s. son the Penal Code.—QUEBN v. GOBURDHUN BERR, 6-W. R. 80: [Loch and Pundit, JJ. Od 4, 1866.]

PRISONER was charged under s. 201 of the Penal Code, for that he, knowing or havin reason to believe that an offence punishable with death had been committed, with the intention of screening the offender from legal punishment, gave information respecting to offence which he knew or believed to be false. Held that the proper order of proof on the part of the prosecution in the present case was to prove (1) that A N was murdered; (1) that the prisoner gave information respecting the offence; (3) that such information we false, and known by him to be so; (4) that he then knew of the commission of the muder; and (5) that his intention was to screen the murder. Held also, that it was essent to the completeness of the case for the prosecution to show, not only that the information was given, but also that it was false, and known to be so by the prisoner. Further inquindirected under s. 422, Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 428 of the new Code of Criminal Procedure (Act X. of 1882).—Reg. v. Supramania Pillal, 3 Mad. H. C. R. 251. [Collet and Ellis, J]. Dec. 17, 1866.]

S. 201 applies to the causing of disappearance of evidence of an offence committed by another, not by one's self.—5 W. R., Cr. L., 5, No. 242 of 1866.

A CONVICTION on a charge of causing the disappearance of evidence of an offence which amounted to culpable homicide not amounting to murder, may be good, though the be no proof of who committed the culpable homicide.—QUBEN v. MUDDUN MOHUN BOS 7 W. R. 22. [Kemp and Markby, JJ. Jan. 26, 1867.]

S. 201 of the Penal Code refers to prisoners other than the actual criminals, who is their causing evidence to disappear, assist the principals to escape the consequences of the offences. But the person who commits an offence, and afterwards conceals the evidence it, cannot be punished on both heads of the charge.—Queen v. Ramsoonder Shootal 7 W. R. 52 [Kemp and Glover, J]. April 6, 1867.

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FALSE EVIDENCE, &c.

[SBC. 201.

:WHERE a person is charged (s. 218, Penal Code) with framing a report incorrectly, 201, Penal Code) giving false information with intent to save offenders from punishe, the issue to be tried is, not whether such alleged offenders were in fact guilty onnot, incredy the belief and intention of the prisoners in respect to their guilt. Police-diabannot be legally used as substantive evidence or read to the jury.—QUEEN v. HURDUT [20, 8] W. R. 68. [Seton-Karr and Macpherson, J]. Sep. 7, 1867.]

A PERSON cannot be convicted, under s. 201 of the Penal Code, of causing evidence the commission of an offence by himself to disappear; nor can he be convicted of the timent of such an act.—Reg. v. Kashinath Dinkar, 8 Bom. H. C. R. 126. [Wester, C.J., and Lloyd, Melvill, Green, and Kemball, JJ. April 12, 1871.]

A PERSON cannot be punished under s. 201 of the Penal Code, where the act which fed the disappearance of the evidence of the commission of an offence, was not done the intention of screening the offender from legal punishment. It is not sufficient the disappearance of evidence was likely to have the effect of screening the offender. The Dolsher Rai, 5 N.-W. P. 186. [Jardine, J. June 7, 1873.]

THE accused, on his arrest, denied all knowledge of an offence in which he really took.

Held that he could not be convicted, under s. 201, of giving false information acting an offence.—FAKIR-UD-DIN r. CROWN, Panj. Rec., No. 4 of 1877.

K AND B, having caused the death of J in a field belonging to B, removed J's dead from that field to his own field with the intention of screening themselves from ishment. K was convicted on these facts of an offence under s. 201 of the Penal Code. If that that section referred to persons other than the actual offenders, and K could therefore, properly be punished under that section for what he had done to ease the left from punishment. Also that, as a matter of fact, he did not, by removing J's one from one field to another, cause any evidence of J's nurder, which that corpse the defined in the section of the left suspicion himself and B, did not constitute the offence defined in that section.—EMPRESS of SHNA, I. L. R., 2 All. 713. [Pearson, J. Feb. 18, 1880.]

IT is necessary, in order to justify a conviction under s. 201 of the Penal Code, that defence, for which some person has been convicted, or is criminally responsible, should be been committed.—Empress v. Abdul Kadir, I. L. R., 3 All. 279. [Stuart, C.J., and son, Oldfield, and Straight, JJ. Nov. 11, 1880.]

A woman who, with her infant child, eloped from her husband's house, was afterds arrested on a charge of murdering the child, which was missing. She made three trent statements: (1) that she had left it with her husband; (2) that she had been seed away by one R, who had taken the child from her; (3) that one H had drowned thild. The Sessions Judge believed the last statement, and convicted her under s. 201 the Penal Code. Held that the conviction was wrong, and must be set aside. S. 201 the Penal Code does not apply to a case where the person, who is the probable or posteroffender, makes statements, exculpating himself by inculpating another.—In the title of Behala Bibber, Empress v. Behala Bibber, I. L. R., 6 Cal. 789; 8 C. L. R. [Pontilex and Field,]]. Mar. 7, 1881.]

In a trial upon a charge under s. 201 of the Penal Code, the accused made a statement, the effect that he was present at the commission of a murder by two other persons, that himself took no part in the act, that, before the murder was committed, one of the person named pulled off a razai from the bed on which the deceased was sleeping, and that, his presence, the razai was subsequently concealed in a stack. It was proved that the sai belonged to the deceased, that it was found concealed in a stack, and that it was point-out by the accused to the police. The accused was convicted of concealing evidence of a murder, with the intention of screening the offender from legal punishment, under not of the Penal Code. Held that the conviction must be quashed, inasmuch as, if the had not been concealed or destroyed, its presence or existence would have been no thence of the murder. A person, who, is concerned as a principal in the commission of time, cannot be convicted of the secondary offence of concealing evidence of the crime.—

TENNELS V. LALLI, I. L. R., 7 All. 749. [Petheram, C.]., and Brodhurst, J. April 1865.]

BEFORE an accused can be convicted of an offence under s. 201 of the Peral Code, it be proved that an offence, the evidence of which he is charged with causing to dispear, has actually been committed, and also that the accused knew, or had information

sufficient to lead him to believe, that the offence had been committed. Kadir (I. L. R., 3 All. 279) followed.—MATUKI MISSER v. EMPRESS, I. L. R [Mitter, Macpherson, and Prinsep, J]. May 13, 1885.]

S. 201 of the Penal Code does not apply to the case of a criminar could be ance of evidence of his own crime, but only to the case of a person who screens to cipal or actual offender. Queen v. Ram Soonder Shuter (7 W. R. 52), Reg. v. K. Dinkar (8 Bom. H. C. R. 125), Empress v. Krishna (I. L. R., All. 713). Empress. hala Bibee (I. L. R., 6 Cal. 789), and Queen-Empress v. Lalliff. L. R., 7 All. 749), to.—Queen-Empress v. Dungar, I L. R., 8 All. 252. [Brodhurst, J. April 5, 4

The above section refers to persons (other than the actual criminals), who, causing evidence to disappear, assist the principal to escape the consequences of h Thus, in Reg. v. Kashinath Dinkar (8 Bo n. H. C. R. 125), Lloyd, J., observedt. and the two following sections commence with precisely the same words. Now is no law which obliges a criminal to give information which would convict him evident that ss. 202 and 203 could not apply to the person who committed the offence offence which, he knew, had been committed." A prisoner pushed a woman, who a boat, and died then and there. Afterwards he set the boat, with the corpse in I down the river, and so concealed the evidence of his offence. It was held that he guilty of the offence of causing evidence to disappear. —QUEEN v RAMSOONDER 5 7 W. R. 52. [Kemp and Glover,]]. April 6, 1867.

Presy. Mag. or Mag. of 1st or and class. Uncog. Summons Bailable. Not comp.

Intentional omission to give information of offence by person bound to inform.

Tine, or with both.

202. Whoever, knowing or having reason to believe that an offer been committed, intentionally omits to give formation respecting that offence which he is ly bound to give, shall be punished with im ment of either description for a term which may extend to six months,

In this section the word "offence" has the same meaning when the thing pus under the special or local law is punishable under such law with imprisonment for of six months or upwards, whether with or without fine.—S. 40, Penal Code.

WHERE the corpus delicti is not established, there can be no conviction for c homicide not amounting to murder, nor for intentional omission to give notice offence which has not been proved to have been committed.—QUEEN v. RAM ! SINGH, 4 W. R. 29. [Kemp and Seton-Karr, JJ. Nov. 28, 1865.]

A KARNAM is a private person in respect of ss. 176 and 202 of the Penal Cod being no law binding him in any special way to report or prevent crime. He is, the not liable to punishment for not reporting the commission of a crime not enume ch. 4 of the Code of Criminal Procedure, 1832.-Mad. H. C. Rul., Mar. 12, 1867; Jur. 280.

An omission to give information that a crime has been committed does not s. 107 of the Penal Code, amount to abetment, unless such omission involves a bro legal obligation. A private individual is not bound by any law to give information offence which he has seen committed.—QUEEN v. KHADIM SHEIKH, 4 B. L. R., Nov. 23, 1869] [Loch and Glover,]].

Per Kemp, J.—Before a person cap be convicted of an offence under s. 2006. Code, there must be legal evidence (1) that he has knowledge, or reason to belief some offence has been committed; (2) an intentional omission to give any infan respecting that offence; and (3) that he is legally bound to give information of that In this case, the Sessions Judge, having found that there was no evidence at all, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 428, new \$\frac{1}{3}\$ Criminal Procedure (Act X of 1882), did not apply, as that section only authorizes an late Court to direct additional evidence to be taken where there is some prima-fa dence bearing upon the guilt or innocence of the accused, but not where there is dence at all. Per Glover, J .- The Sessions Judge, having found that an offence was mitted and that the accused were bound by law to give information respecting it, be there was not, on the record, evidence of their omission to give that information, was petent, under s. 422, to order the deficiency to be supplied, the object of that section the prevention of a guilty person's escape through some careless or ignorant proce

eistrate, or the vindication of a wrongfully accused person's innocence where the . icarelessness or ignorance has omitted to record the circumstance essential to the eluion of truth.—In the Matter of Woodov Chand Mookhopadhya, 18 W. R. 31; L. R., Ap., 31. [Kemp and Glover,]J. July 22, 1872.]

WARRANT a conviction under s. 202, Penal Code, the prosecution must prove that cused knew, or had reason to believe, that an offence had been committed of which he bound to give information. Mere omission to inquire into the truth of rumours that ed him, or statements that were made to him, does not constitute an offence under ection. Held, also, that, where an act is capable upon the evidence of two constructhe accused is entitled to the benefit of that one which is most favourable to his mce.—In the Matter of Beembadhur Dass, 1 Shome's Rep. 29.

ing false information rene an offence commit-

203. Whoever, knowing, or having reason to believe, that an offence has Presy. Mag. been committed, gives any information respecting or Mag. of 1st that offence which he knows or believes to be false, or 2nd class. Uncog. shall be punished with imprisonment of either descrip- Warrant.

for a term which may extend to two years, or with fine, or with both.

Explanation.—In sections 201 and 202, and in this section, the word tence" includes any act committed at any place out of British India, th, if committed in British India, would be punishable under any of the owing sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.*

In this section the word "offence" denotes a thing punishable under this Code, or any special or local law as defined in this Code.—S. 40, Penal Code.

A PRISONER'S intention is immaterial to his conviction under s. 203 of the Penal Code aving given false information respecting an offence committed. Thus, where a chaukihaving found a corpse with wounds on the throat and jaw, gave information at the withat the deceased had died of cholera, and that there was nothing suspicious in the er, he was convicted under s. 203 of the Penal Code.—QUEEN v. CHEETOUR CHOW-DAR, I W. R. 18. [Glover, J. Sep. 26, 1864.]

THE elements of an offence under s. 203 of the Penal Code are, 1st, that the accused. know, or have reason to believe, that an offence has been committed; 2nd, the givof information respecting such offence which the accused knew or believed to be false. refore, in order to constitute this offence, it would not be necessary that the accused ald be aware of the circumstances attending the death of M, but only that he should , or have reason to believe, that M had been killed by criminal means, or that othersome offence had been committed; and if, with such knowledge or belief, the accused any information in relation thereto which he knew or believed to be false, he would mit the offence.—9 W. R., Cr. L., 2, No. 135 of 1868.

To justify a conviction for giving false information with respect to an offence under s of the Penal Code, it must be proved, not only that the person charged had reason to eve that an offence had been committed, but that the offence had actually been commitand that the accused knew, or had reason to believe, that the offence had been actu-committed.—QUEEN v. JOYNARAIN PATRO, 20 W. R. 66. [Jackson and Mitter, J]. , 15, 1872.]

204. Whoever secretes or destroys any document which he may be law- Presy Mag. fully compelled to produce as evidence in a Court or Mag. of 1st struction of document to of justice, or in any proceeding lawfully held before class. ent its production as evia public servant as such, or obliterates or renders Warrast. the the whole, or any part, of such document with the intention of prevent-Bailable. the same from being produced or used as evidence before such Court or Not comp. ic servant as aforesaid, or after he shall have been lawfully summoned or

Bailable. Not comp.

^{*} This Explanation has been added by Act III. of 1894, s. 6.

required to produce the same for that purpose, shall be punished with im ment of either description for a term which may extend to two years fine, or with both.

WHERE the plaintiff in a suit referred to arbitration by consent, with a view i vent a witness from referring to an endorsement on a bond (which tended to si defendant had paid more than it was alleged had been paid by him), statched up the which was lying besides the arbitrator, ran away, and refused to produce it, held offence committed was not theft, but secreting a document under s. 204 of the Code.—Subramania Ghanapati v. Reg., I. L. R., 3 Mad. 261. [Turner, C.J., 201] tusami Ayyar, [. Sep. 2, 1881.]

A PERSON merely withholding a document, or not producing it on a false per cannot be convicted of the offence of secreting such document specified in this 2 N. A., N.-W. P., Part I., 64.

Ct. of Ses. Presy. Mag., or Mag. of ıst class. Uncog. Warrant. Bailable. Not comp.

205. Whoever falsely personates another, and, in such assumed ch makes any admission or statement, or conferme False personation for purment, or causes any process to be issued, or be pose of act or proceeding in suit. bail or security, or does any other act in any tion for a term which may extend to three years, or with fine, or with be

UNDER s. 205 of the Penal Code, it is criminal to personate an imaginary QUEEN v. BITTO KAHAR, I Ind. Jur., O. S., 123. [Seton-Karr and Campbell,]]. 1862.] Dissented from in In re Kadar Ravuttan and Ayangana Ravuttan, H. C. R. 18.

FRAUDULENT gain or benefit to the offender is not an essential element of the of false personation under s. 205 of the Penal Code, and a conviction for false per may be upheld, even where the personation is with the consent of the person per — Ex-parte Suppakon, 1 Mad. H. C. R. 450. [Scotland, C.J., and Frere, J. Nov.]

It is necessary to a conviction for false personation, under s. 205 of the Per that the accused should have assumed the name and character of the person he is with having personated. The fact that he presented a petition in Court in the that individual, held, under the circumstances of this case, to be insufficient to intention of falsely personating such person.—QUEEN v. NARAIN ACHARJ, 8 W. [Glover and Hobhouse,]]. Nov. 13, 1867.]

To constitute false personation under s. 205, it is not enough to show the ass of a fictitious name. It must also be shown that the assumed name was used as a of representing some other known individual. A mere "alias" or "incog." is no for it is no uncommon thing for men to pass under names not their own for the of disguise, in some instances from blameless, in others from indifferent or bad, But, whatever the motive, the use of an assumed name is not in itself a criminal The gist of the offence under s. 205 is the feigning to be another known pers whole language of the section clearly imports the acting the part of another per-actor pretending that he is that person. There are sections of the Penal Code (for in ss. 140, 170, 171, and 415) under which the false assumption of appearance or d may be an offence, though no particular individual is meant to be represented, or imaginary person; but it is not so here. Reg. v. Bitoo Kahar (1 Ind. Jur. 123) from .- In re KADAR RAVUTTAN AND AYANGANA RAVUTTAN, 4 Mad. H. C. R. 18; Jur. 146. [Scotland, C.J., and Collett, J. Mar. 9, 1868.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not can p. Sanction.

206. Whoever fraudulently removes, conceals, transfers, or delig any person any property or any interest Fraudulent removal or concealment of property to preintending thereby to prevent that property or vent its seizure as a forfeiture therein from being taken as a forfeiture, or in or in execution of a decree. faction of a fine, under a sentence which h

pronounced, or which he knows to be likely to be pronounced, by a C Justice or other competent authority, or from being taken in execution

140 - Wearing drenga soldier 208] 170 - Person ating a Pahlie dervant 171 - Wearing garb or Carrying tokan

CHAP. XI.

FALSE EVIDENCE, &c.

[SECS. 207-200.

decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

A PERSON who fraudulently removes property, intending thereby to prevent that pro-perty from being taken in execution of a decree made by a Collector, commits an offence, and is punishable under s. 206 of the Penal Code, and not under s. 145, Act X. of 1859.-GOUR CHUNDER CHUCKERBUTTY v. KISHEN MOHUN SINGH, 10 W. R. 46; 2 B. L. R., S. N., 4. [Loch and Glover, JJ. Sep. 11, 1868]

To bring a case under s. 206 of the Penal Code, there must be a fraudulent removal, sale, or transfer of property, or of some interest therein, intending thereby to prevent that property from being taken as a forfeiture or in satisfaction of a fine. -IN THE MATTER BALMOKOOND BROJOBASI, 18 W. R. 65. [Kemp and Pontifex, J]. Novelo, 1872.]

207. Whoever fraudulently accepts, receives, or claims any property or Presy. Mag. any interest therein, knowing that he has no right or or Mag. of 1st Fraudulent claim to property to prevent its seizure rightful claim to such property or interest, or practises or 2nd class. is forfeited or in execution. any deception touching any right to any property or Warrant, any interest therein, intending thereby to prevent that property or interest there. Bailable. from being taken as a forfeiture or in satisfaction of a fine, under a sentence Not comp. which has been pronounced, or which he knows to be likely to be pronounced. Sanction. y a Court of Justice or other competent authority, or from being taken in exscution of a decree or order which has been made, or which he knows to be likely be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with. line, or with both.

208. Whoever fraudulently causes or suffers a decree or order to be passed Presy. Mag. Fraudulently saffering de- against him at the suit of any person for a sum not due, or Mag. of 1st ree for sum not due. or for a larger sum than is due to such person, or for class. in property or interest in property to which such person is not entitled, or fraud-Warrant. mently causes or suffers a decree or order to be executed against him after it Bailable. has been satisfied, or for anything in respect of which it has been satisfied, shall Not comp. be punished with imprisonment of either description for a term which may Sanction. extend to two years, or with fine, or with both.

Illustration.

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against im, fraudulently suffers a judgment to pass against him, for a larger amount at the suit B who has no just claim against him, in order that B, ei her on his own account, or for he benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

209. Whoever, fraudulently or dishonestly, or with intent to injure or Dishonestly making false annoy any person, makes in a Court of Justice any aim in Court. claim which he knows to be false, shall be punished ith imprisonment of either description for a term which may extend to two ears, and shall also be liable to fine.

WHERE a person applies for the execution of a decree which has already been executnd, his offence falls, not under s. 209, but s. 210, of the Penal Code. S. 209 relates to false and fraudulent claims in a Court of Justice, and is confined to the Civil Court in which the original suit was brought.—QUEEN v. BEEGUN MAHTOON, 12 W. R. 37. [Norman and ackson, JJ. July 26, 1869.]

THE lessee of a house, who permitted disorderly people to use it for gambling, and hereby caused annoyance to the public, was convicted of an offence under the Penal Code, Ditto.



s. 290. It appeared, however, that the accused had not engaged the house with the object of letting it out as a gaming-house. Held that the conviction was right.—QUEEN-EMPRESS v. THANDAVARAYUDU, I. L. R., 14 Mad. 364. [Muttusami Ayyar and Wilkinson, J]. Jan. 28, 1891.]

Presy. Mag. or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp. Sanction.

Fraudulently obtaining decree for sum not due.

for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

WHERE a person applies for the execution of a decree which has already been executed, his offence falls, not under s. 209, but s. 210, of the Penal Code. S. 209 relates to false and fraudulent claims in a Court of Justice, and is confined to the Civil Court in which the original suit was brought.—Queen v. Beegun Mahtoon, 12 W. R. 37. [Norman and Jackson, JJ. July 26, 1869]

S, 258 of the Code of Civil Procedure, which provides that no payment or adjustment of a decree not certified to the Court as in the said section provided shall be recognized by any Court, does not debar a Criminal Court from recognizing such payment where the decree-holder is charged with fraudulently executing a satisfied decree-Quren-Empress v. Pillala, I. L. R., 9 Mad. 101. [Hutchins, J. Oct. 6, 1885]

S. 195 of the Criminal Procedure Code (Act X. of 1882) distinguishes between the sanction granted by a Court to a prosecution by a private individual and a complaint made by the Court itself. A superior Court to which such Court is subordanate may evoke the sanction granted in the former case to the private prosecution, but it has no power in the latter case to set aside a complaint duly made by a subordinate Court.—QUERN-EMPRESS v. RACHAPPA, I. L. R., 13 Bom. 109 [Birdwood and Parsons, JJ. July 5, 1888.]

A COMPLAINANT applied to a Munsif for sanction to prosecute a decree-holder for an offence under s. 210 of the Penal Code, and, upon the Munsif's refusing such application preferred an appeal to the District Judge, who granted the sanction asked for. The decree-holder, having been prosecuted and convicted before a Deputy Magistrate, preferred an appeal, which came on for hearing before, and was disposed of by, the same District Judge who had granted the sanction. Held that the words "shall try any person," as used in s. 487 of the Code of Criminal Procedure, include the hearing of an appeal, and that the hearing of the appeal from the order of the Munsif refusing sanction was a judicial proceeding within the meaning of the Code, and consequently that, under the provisions of s. 487, the District Judge had no jurisdiction to entertain the appeal against the judgment and sentence passed by the Deputy Magistrate.—In the Matter of Madhub Chunder Mozumbar v. Nevoder Punder, I. L. R., 16 Cal. 121. [Macpherson and Trevelyan, JJ. Nov 1088.]

A DECREE-HOLDER having proceeded to execute his decree against his judgment debtor the latter objected, stating that the decree had been already satisfied, although the adjustment thereof had not been certified to the Court as required by s. 258 of the Code of Civil Procedures. The judgment-debtor, being under the circumstances compelled to theposit the amount of the decree in Court, applied for and obtained sanction to prosecute the decree holder for an offence under s. 210 of the Penal Code. It was contended that the case did not fall within that section, as the satisfaction, not having been certified to the Court could not be recognized by the Court executing the decree, and that consequently no offence had been committed. Held that the words "after it has been satisfied," used in s. 210 of the Penal Code, indicate only the fact of the satisfaction of the decree. The fact that the satisfaction is of such a nature that the Court executing the decree could not recognize it does not prevent the decree-holder from being properly convicted of an offence under that section.—Madhus Chunder Mozumdar v. Novodber Chunder Pundit, I. L. R., 16 Cal. 126. [Mitter and Macpherson, []. Dec. 18, 1883.]

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CHAP. XI.]

FALSE CHARGE.

[SEC. 211.

211. Whoever, with intent to cause injury to any person, institutes, or Presy. Mag. of charge of offence causes to be instituted, any criminal proceeding or Mag. of 1st class. False charge of offence made with intent to injure. against that person, or falsely charges any person Uncog. with having committed an offence, knowing that there is no just or lawful Warrant. ground for such proceeding or charge against that person, shall be punished Ballable. with imprisonment of either description for a term which may extend to two Sanction. years, or with fine, or with both;

and it such criminal proceeding be instituted on a taise charge of an or Presy. Mag., fence punishable with death, transportation for life, or imprisonment for seven or Mag. of 1st and, if such criminal proceeding be instituted on a false charge of an of- Ct. of Ses., years* or upwards, shall be punishable with imprisonment of either description class. for a term which may extend to seven years, and shall also be liable to fine.

Uncog. Warrant, Bailable. Not comp.

MEANING OF "OFFENCE."

In this section the word "offence" denotes a thing punishable under this Code or Sanction. under any special or local law as defined in this Code. -S. 40, Penal Code.

MAKING FALSE CHARGE.

No charge of making a false charge can be proved while the original charge is still ander investigation, as it may turn out that the Court conducting the investigation may say that it is a true charge; but it is not necessary that the charge should be heard and dismissed; it is sufficient if it be not pending at the time of the trial.—REG. v. SUBBANNA GAUNDAN, I Mad. H. C. R. 30; I Ind. Jur., O. S., 136. [Scotland, C.J., and Phillips, J Oct. 27, 1862.]

To establish a charge under s. 211, it is necessary to show that the accused knew, or had reason to believe, that an offence had been committed.— QUEEN v. BITTO KAHAR, I ind. Jur., O. S., 123. [Seton-Karr and Campbell, JJ. Nov. 20, 1862.]

WHEN a prisoner is convicted of having made a false charge of an offence, the nature of the false charge should be stated in the finding, and entered in the calendar.—Reg. v. Arjun, 1 Bom. H. C. R. 87. [Forbes and Westropp,]]. Nov. 4, 1863.]

THE conviction of a police-inspector for having abetted the bringing of a false charge of murder quashed, because it was not distinctly shown that he preferred the charge mald QUEEN v. MUTHOORAPERSHAD PANDAY, 2 W. R. g. [Kemp and Glover,]]. 18, 1865.]

THE mere fact that an accuser (in this case a subordinate police-officer) is an official in a subordinate position will not shield him from the consequences of false and malicious charges made by him officially.—Queen v. Rhedoy Nath Biswas, 2 W. R. 45. [Glover,]. Mar. 15, 1865.]

WHERE a man burns his own house, and charges another with the offence of doing so, he should be convicted and sentenced under s. 211, and not under s. 105. QUEEN v. BHUGWAN AHIR, 8 W. R. 65. [Loch and Hobhouse, JJ. Aug. 28, 1867.]

Ss, 182 and 211 of the Penal Code distinguished. The latter held to apply to a case of false charge in which the accused in the present case had appeared before the police, and charged the new complainant with having caused the death of the accused's child by poisoning.—Ruffee Mahomed v. Abbas Khan, 8 W. R. 67. [Jackson and Hobhouse,]]. Sep. 3, 1867.]

5. 211 of the Penal Code applies, not only to a private individual, but also to a concer who brings a false charge of an offence with intent to injure. IN THE MATTER OF NABODEEP CHUNDER SIRCAR, 11 W. R. 2. [Jackson and Markby, J]. Jan. 12, (860.)

*"If offence charged be punishable with imprisonment for seven years," the case is triable by the "Court of Session, Presidency Magistrate, or Magistrate of the first class." -A& X. of 1886, s. 17.

WHERE a Deputy Magistrate instituted proceedings against a complainant and his, witnesses for preferring a false charge of theft before him, it was held that he could not merely rely on the decision in the theft case, but was bound to prove the falsity of the complaint of theft in the presence of the accused.—QUEEN v. RAM DASC BOISTUB, II W. R. 35. [Jackson and Markby, J]. April 6, 1869.]

IF a Magistrate considers a complaint false and groundless, he is not bound to issue a summons or warrant. The law vests him with a discretion, which discretion it is incumbent on him to exercise. At the same time the Magistrate should always take the examination of the complainant.—In re RAMCHURN, 3 N.-W. P. 272. [Turner,]. Aug. 25, 1871.]

IF the charge of voluntarily causing hurt, contained in a petition of complaint, is wilfully false, and made with intent to injure, then the complainant is legally chargeable with the offence described in s. 211 of the Penal Code.—QUEEN v. MATA DYAL, 4 N.-W. P. 6. [Pearson, J. Jan. 13, 1872.]

THE Lower Criminal Courts cannot punish, as abettors, persons who gave evidence in support of false charges—or rather, charges found by such Courts to be false. 6. 108 of the Penal Code does not contemplate any acts of subsequent abetment, or provide for the penishment of such offences, except when they are such as are defined in ss. 212 to 212—QUEEN v. PAUN PUNDAH, 18 W. R. 28; 9 B. L. R., Ap., 16. [Kemp and Glover,]] July 11, 1872.]

WHERE the charge is one of instituting a false charge of an offence with intent to injure, the actual information which the prisoner made at the thana ought to be given in evidence, and form part of the record.—QUEEN v. HOOLAS alias SUTTOD, 23 W.R. 32. [Phear and Morris, J]. Jan. 30, 1875.]

An offence under s. 211 of the Penal Code includes an offence under s. 182; it is, therefore, open to a Magistrate to proceed under either section, although, in cases of a more serious nature, it may be that the proper course is to proceed under s. 211.—BHOKTERAR 7. HERRA KOLITA, I. L. R., 5 Cal. 184. [Ainslie and Broughton,]]. April 26, 1879.]

THERE is nothing in s. 211 of the Penal Code which limits the penalty there imposed to cases in which attempts have been made to substantiate false charges in a Court of Justice. A false charge made before the police is, therefore, punishable under this section.—Ashrof Ali v. Empress, I. L. R., 5 Cal. 281. [Mitter and Tottenham, JJ. June 24, 1879.]

It is necessary for a conviction under s. 211 of the Penal Code that the false charges should have been made to a Court or officer having jurisdiction to investigate and send it up for trial.—In the Matterof Jamoona Empress, v. Jamoona, I. L. R., 6 Cal. 620. [Mitter and Maclean, JJ. Jan. 22, 1881.]

A CRIMINAL prosecution for an offence under s. 211 is not a condition precedent to the right to sue for damages. The bringing of a civil suit imports no corrupt agreement or compounding of the offence in such a case. Shama Churn Bose v. Bhole Nath. Dutt (6 W. R., Civ. Ref., 9) followed.—VIRANNA v. NAGAYYAH, I. L. R., 3 Mad. 6. [lases and Kernan,]]. Mar. 14, 1881.]

A PRISONER, charged under s. 211 of the Penal Code with having brought a false charge with intent to injure, by accusing A of having caused the death of a person by doing a rash or negligent act not amounting to culpable homicide under s. 304A, stated at the trial that the original complaint made by him was false, and that he made it until thinkingly. The Sessions Judge treated this statement as a plea of guilty, and sentenced the prisoner to rigorous imprisonment. No record of the prisoner's plea. as required by s. 237 of the Criminal Procedure Code (Act X. of 1872), corresponding with as. 255 and 271 of the new Code of Criminal Procedure (Act X. of 1882), appeared on the proceedings; nor did it appear that the charge had been explained as well as read to the prisoner, and the Judge considered that the original complaint did not amount to a false charge of an offence under s. 304A. Held that the conviction was bad.—Empress v. Goeal.

Dhanuk, I. L., R., 7 Cal. 96; 8 C. L. R. 471. [Morris and Tottenham, J]. April 21, 1881.]

R CHARGED A with breach of trust, and S gave evidence in support of the charge. A being acquitted, R was tried for making a false charge, and S for perjury. Held (1) that the depositions given by witnesses in the first case could be used against R in the second case, but not against S, under s. 33, Evidence Act; (2) that the word "questions"

a.s. 38 does not mean "all the questions;" and that, though additional issues were involved in the second trial, yet the evidence as to the issues common to both trials was properly admitted at the second trial against R.—In re Rami Reddi, I. L. R., 3 Mad. 48. [Innes and Muttusami Ayyar, J]. May 2, 1881.]

THE fact that an offence alleged to have been committed has been compounded is no poclusive answer to a charge made against the prosecutor under s. 211 of the Penal Code. I laid a charge against M for wrongful confinement. The police reported the case as a false one; and A not appearing to prove the complaint, the District Magistrate ordered him to be prosecuted under s. 211 of the Penal Code, and made over the case to a Deputy Magistrate. • Upon the hearing of such charge, A pleaded that he had compounded the briginal charge laid by him against M, and that therefore the charge against him under s. 211 could not lie. The Deputy Magistrate, without hearing any evidence, dismissed he case. Held that the course so taken was illegal, as such plea was no conclusive answer to a charge under s. 211.—QUBEN-EMPRESS v. ATAR ALI, I. L. R., 11 Cal. \$9. [Wilson and Macpherson, JJ. Nov. 3, 1884.]

A prosecution under s. 182 of the Penal Code may be instituted by a private person, provided that he first obtains the sanction of the public officer to whom the false information was given, or of his official superior. Queen v. Radha Kishan (I. L. R., 5 All. 36) everaled (see p. 208, infra). Where a specific false charge is made, the proper section for proceedings to be adopted under is s. 211 of the Penal Code.—Queen-Empress v. Jusal Kishore, I. L. R., 8 All. 382. [Straight, Offg. C.]. May 28, 1886.]

A FALSE charge before the police is a false charge falling within the first portion of 1.211 of the Penal Code. The latter portion of s. 211 of the Penal Code is confined to cases in which criminal proceedings have been instituted, and does not apply to false tharges merely. Empress of India v. Pitam Rai (I. L. R., 5 All. 215) and Empress v. Paraka (I. L. R., 5 All. 2598) followed.—Queen-Empress v. Karim Buksh, I. L. R., 14 Cal. 633. [Sir W. Comer Petheram, C.J., and Ghose, J. June 10, 1887.]

WHAT CONSTITUTES MAKING OF A FALSE CHARGE.

To constitute the offence of preferring a false charge under s. 211 of the Penal Code, the charge need not be made before a Magistrate; nor need the charge have been fally heard and dismissed: it is enough if it is not pending at the time of trial.—Reg. Subbanna Gaundan, I Mad. H. C. R. 30. [Scotland, C.J., and Phillips, J. Oct. 27, 1862.]

To prefer a complaint to the police in respect of an offence which they are competent to deal with, and thereby to set the police in motion, is to institute a criminal proceeding within the meaning of s. 211 of the Penal Code.—QUEEN v. BONOMALLY SOHAI, W. R. 32. [Campbell and Phear, JJ. Feb. 20, 1866.]

INSTITUTING a criminal proceeding with intent to injure, knowing that there is no isst or lawful ground for such proceeding, may be treated as a distinct offence from that of falsely charging a person with having committed an offence. A police officer, though scting upon the information of an informer, may be said to institute a criminal proceeding against the person charged by him; and the consent of his superior officer to such charge will be no guarantee against the consequences of bad faith on his part. The proceeding, when establishing the fact that a police-officer acted knowing there to be no just bounds for proceeding, is bound to call all those on whose statements such officer aid hasted.—QUEEN v. NOBOKISTO GHOSE, 8 W. R. 87. [Seton-Karr and Macpherson,]]. Dec. 31, 1867.]

A PALSELY, and with intent to injure, informed the police that B had stolen property in his house. The police searched B's house, and the information proved to be also. Held that A had instituted criminal proceedings, and that he was therefore guilty of an affence under s. 211, and not under s. 182.—MUTHRA v. ROORA, Panj. Rec., No. 16 of 1890.

IF the charge of voluntarily causing hurt, contained in a petition of complaint, is wilfully false, and made with intent to injure, then the complainant is legally chargeable with the offence described in s. 211 of the Penal Code.—QUEEN v. MATA DYAL, 4 N.-W. P. 6. [Pearson,]. Jan. 13, 1872.]

WHERE a person who is interested in the matter, or has a certain official responsibility, says to a police-officer, "A tells me that X has committed a certain offence, and B and C

confirm the statement, and I accordingly suspect X," and follows up that statement is an application to have X's house searched, he prefers a charge against X. If such charge be false, he may be convicted under s. 211 of the Penal Code.—QUEEN v. HUMOGMAN LALL, 19 W. R. 5. [Jackson, J. Dec. 4, 1872.]

To constitute the offence of making a false charge under's. 211 of the Penal Code, it is enough that the false charge is made, though no prosecution is instituted threes. Queen v. Subbanna Gaundan (1 Mad. H. C. R. 30) followed. Reference in the Came of Bishoo Barik (16 W. R. 67) distinguished.—Empress v. Abul Hasan, I. L. R., 1 All. 497. [Turner and Spankie, J]. Nov. 9, 1877]

To constitute the offence of making a false charge under s. 211 of the Penal Code, it is enough that the false charge is made, though no prosecution is instituted thereon. Queen v. Subbanna Gaundan (1 Mad. H. C. R. 30) followed. Reference in the case of Bishoo Barik (16 W. R. 67) distinguished.—Empress v. Salik, I. L. R., 1 All. 527. [Pearson and Turner, J]. Dec. 7, 1877.]

WHERE A and F were convicted of culpable homicide, and one G H petitioned the Lieutenant-Governor for their release, on the ground that the accusation was a false one, got up by one S K from enmity, whereupon S K charged G H with making a false charge with intent to injure, and procured his conviction under s 211, held that G H was wrongly convicted under that section. To constitute the offence of "falsely charging a person with having committed an offence" within the meaning of s. 211, something was is necessary than to impute against a person that he has committed an offence. The "charge contemplated in the section means a charge made in order to the institution of criminal proceedings.—Ghulam Hussain v. Crown, Panj. Rec., No. 14 of 1879.

The actual institution of criminal proceedings on a false charge is essential to the application of the latter part of s. 211 of the Penal Code, and, if a person only makes a false charge, his case falls under the first part of the section irrespective of the fact that the false charge relates to "an offence punishable with death, transportation for life, or inprisonment for seven years or upwards."—EMPRESS v. PITAM RAI, I. L. R., 5 All. 2154 [Mahmood, J. Sep. 25, 1882.] Concurred in in Empress v. Parahu, I. L. R., 5 All. 508.

WHERE a person specifically complains that another man has committed an edince, and does so falsely with the object of causing injury to that person, he is guitty of making a false charge of an offence under s. 211 of the Penal Code, and not under s. 182.—EnPRESS v. ARJUN, I. L. R., 7 Bom. 184. [West and Pinhey, JJ. Nov. 2, 1882.]

WHERE no criminal proceeding is instituted on a false charge of an offence of the nature described in the latter part of s. 211 of the Penal Code, the person making such charge is punishable only under the first part of that section.—EMPRESS v. PARAHU, I. L. R. 5 All. 598. [Brodhurst, J. May 22, 1883.] Concurs in Empress v. Pitam Rai, I. L. R. 5 All. 215, supra.

A PERSON who sets the criminal law in motion by making a false charge to the police of a cognizable offence institutes criminal proceedings within the meaning of 211 of the Penal Code; and, if the offence fall within the description in the latter part of the section, he is liable to the punishment there provided.—KARIM BUKSH V. QUERN-EMPRESS, I. L. R., 17 Cal. 574. [Petheram, C.J., and Wilson, Tottenham, O'R meals and Macpherson, JJ. Sep. 5, 1888.]

To constitute the offence defined in the second paragraph of s. 211 of Act XLV. 1860, it is necessary that criminal proceedings should be instituted. Where the offencommitted does not go further than the making of a false charge to the police, the making of such charge does not amount to the institution of criminal proceedings, and to offence committed will fall within the first paragraph of s. 211, notwithstanding that to offence so falsely charged may be one of those referred to in the second paragraph of the section. Queen-Empress v. Pitam Rai (I. L. R., 5 All. 215) and Queen-Empress v. Paral (I. L. R., 5 All. 598) followed; Karim Buksh v. The Queen-Empress (I. L. R., 17 Col. 52 dissented from —QUEEN-EMPRESS v. BISHESHAR, I. L. R., 16 All. 124. [Knox and Bukitt, J]. Dec. 4, 1893.]

WHERE the Sessions Judge on appeal reversed a conviction passed by a Magistrate F. P., of an offence under s. 182 of the Penal Code (which the Magistrate, F. P., was competent to try), and directed the Magistrate, F. P., to institute proceedings again the accused under s. 211, considering that, on the complaint which had been made to

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him, the Magistrate, F. P., was bound to institute proceedings under the latter section, the High Court reversed that part of the order of the Sessions Judge which directed the Magistrate, F. P., to institute proceedings, as the case did not fall within s. 435 of the Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 439 of the new Code of Criminal Procedure (Act X. of 1882), and there was no provision of law giving the Judge jurisdiction to make such an order.—REG. v. GOPAL LAKSHUMAN, 5 Bom. H. C. R. 25. [Couch, C.J., and Newton, J. Mar. 10, 1868.]

A MAGISTRATE has no jurisdiction to convict in a case in which the accused is charged, under s. 211 of the Penal Code, with having falsely instituted a criminal charge of the offence of dacoity.—In the Matter of Kader Buksh, 21 W. R. 34. [Kempand Glover,]]. [an. 26, 1874]

WHERE accused preferred a false charge against complainant under s. 342, and was in consequence tried and convicted by the same Court under s 211, held by a majority of the Court (Campbell, J., dissenting) that the Magistrate had no jurisdiction to try the offender.-CROWN v. HASSAN ALI, Panj. Rec., No. 3 of 1877. This ruling is enacted in s. 476, Code of Criminal Procedure, 1882.

JUST AND LAWFUL GROUND.

WHERE a person is charged, under s. 211 of the Penal Code, with having, with intent to injure, falsely charged another with an offence, knowing that there is no just and lawful ground for the same, the party accused should be allowed to show the information on which s acted, and the Judge ought not only to be satisfied that the facts alleged as the ground for making the charge are in themselves untrue and insufficient, but also that they were known to be such to the accused when the charge was made by him.—REG V. NAVALMAL VALAD UMEDMAL, 3 Bom. H. C. R. 16. [Couch, C.J., and Newton, J. June 20, 1866]

MERE rashness in making a charge, which is in fact believed, is not an offence unders. 211. If an accused person does not know at the time he makes the complaint that there are no just and lawful grounds for making the complaint, he cannot be convicted under s. 211. It is not sufficient for a charge under s. 211 of the Penal Code that a person to whom a wrong has been done, or who conceives that a wrong has been done to him, makes a tharge or complaint upon evidence or statement which is not, or ought not to be, sufficient to satisfy a reasonable mind, if in truth he did not know, at the time he made the complaint, that there was no just and lawful ground for making it. The fact that information upon which a false charge was preferred was not carefully tested by the complainant is not a ground for indictment under s. 211.—QUEEN v. PRAN KISHRN BID, 6 W. R. 15; 2 Wyman's Rev., Civ., and Crim. Reporter 11. [Norman and Campbell,]]. June 25, **1866.**]

UNDER S. 211, Penal Code, "instituting a criminal proceeding" may be treated as an offence in itself apart from "falsely charging" a person with having committed an offence. Where a person is charged with instituting a criminal proceeding with intent to cause inhuy, knowing that there was no just or lawful ground for such proceeding, it is for the prosecution to make out a distinct case against him; not for the prisoner in the first instance to show that he had just or lawful grounds. The deposition of a witness in a former case is not evidence in a subsequent case in which he is examined, except when put into contradict him. Where certain portions of a police-officer's diary are used as evidence against him, s. 154 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 172 of the new Code of Criminal Procedure (Act X. of 1882), does not bar the admission of other portions of the diary as explaining the portions so used. Where facts are air consistent with a prisoner's innocence as with his guilt, innocence must be presumed, and criminal intent or knowledge is not necessarily imputable to every man who acts contrary to the provisions of the law. A Judge should not discuss points of law in summing up to the jury, and he should avoid all the extraneous and unnecessary argument, merely summing up the evidence, and showing how the law applies to it.—QUEEN 7. NOMOKISTO GHOSE, 8 W. R. 87. [Seton-Karr and Macpherson,]]. Dec. 31, 1867.]

A PERSON may, in good faith, institute a charge which is subsequently found to be | G false, or he may, with intent to cause injury to an enemy, institute criminal proceedings against him believing there are good grounds for them, but in neither case has he committed an offence under s. 211 of the Penal Code. To constitute this offence it must be was that the person instituting criminal proceedings knew there were no just or law. ful grounds for such proceedings. The averment that the accused knew that there were

no lawful grounds for the charge instituted is a most material on 2.—QUEEN v. CHISON.-W. P. 327. [Turner, J. Dec. 1, 1871.]

OPPORTUNITY OF SUBSTANTIATING CHARGE.

A DEPUTY MAGISTRATE was held to have acted irregularly in dismissing a complain and directing the trial of the complainant under s. 211 of the Penal Code, without executing his reasons for doing so, and without examining all the witnesses tendered by complainant, or allowing a reasonable time for the attendance of such of the witnesses were not present.—QUEEN v. HEERA LALL GHOSE, 13 W. R. 37. [Jackson and Glover, April 1, 1870.] Followed in Bishoo Barik, Reference in the Case of, 16 W. R. 67, 224 p. 216.

UNDER s. 249, Act VIII. of 1869, which extends the provisions of s. 480 to trial offences under ch. 14, a Deputy Magistrate may dismiss a complaint under that chap without calling evidence, if, in his judgment, there is no sufficient ground for proceed under it. Under the circumstances of this case, however, the High Court considered to the Deputy Magistrate should have made inquiries before charging the complainment unaking a false charge under s. 211, Penal Code.—QUBEN v. GOUR MOHUN STREE, W. R. 44; 8 B. L. R., Ap., 11. [Kemp and Ainslie, J]. Sep. 9, 187.

WHERE a charge of theft was reported by the police to be false, held that the Ming trate ought first to have inquired into the charge of theft, and passed some order ugable-fore proceeding, under s. 211 of the Penal Code, to inquire into the offence of a charge.—Reference in the Case of Bishoo Barik, 16 W. R. 67. [Kemp and Jackson, Dec. 16, 1871.]

WHERE a charge, made against a peshkar and the police, was dismissed upon statements of persons examined by the police, and without complainant's witnesses be examined, the order of dismissal was held to be illegal. It was also held to be illegal with examined, the order of dismissal was held to be illegal. It was also held to be illegal without ground to sanction a prosecution under the Penal Code, s. 211, ágainst the complainant without giving him an opportunity to prove his charge.—Syed Nissar Hossis of Ramgolam Singh, 25 W. R. 10. [Kemp and Pontifex, J]. Jan. 6, 1876.]

A PETITION was presented to the Joint-Magistrate charging the police with have made a false report of an investigation which they had been directed to make at the stance of the petitioner. The Joint-Magistrate, after reading the police-report, refect the petition, and directed the petitioner to be prosecuted under s. 211 of the Penal Co for having made a false charge. Held that the Joint-Magistrate should not have ment the order without first instituting an inquiry into the truth of the complaint, such as in quired by s. 471 of the Code of Criminal Procedure (Act X. of 1872), corresponding we s. 476 of the new Code of Criminal Procedure (Act X. of 1882).—In the Matter of Cuo hale Teles, 2 C. L. R. 315. [Markby and Prinsep, J]. April 8, 1878.]

A MAGISTRATE is not competent to discharge the accused in a warrant-case, and der the complainant to be prosecuted for making a false complaint, until he has examinall the witnesses cited by the complainant.—In the Matter of Gangoo Sum 2 C. L. R. 389. [Mitter and Maclean, J]. May 21, 1878.]

A CHARGE of burglary and theft having been preferred lagainst two persons, the has gistrate, before whom the charge was laid, after comparing the petition of completes with the papers submitted to him by the police, who had made an inquiry, and report the charge to be false, directed, without having taken the examination of the completes that the case should be struck out, and that proceedings should be instituted against complainant under s. 182 of the Penal Code. Proceedings were accordingly taken, a the complainant was ultimately tried and found guilty of an offence under s. 211. He on appeals that the proceedings had been irregular, and should be quashed; that the Magistrate should be directed to re-open the inquiry into the charge of burglary and the first examining the complainant; and that, if, after such examination, he should be opinion that the charge was false, the appellant might be proceeded against under a so of the Penal Code.—In the Matter of Biyogi Bhagut, 4 C. L. R. 134. [Jacksta a McDonell, J]. Mar. 18, 1879.]

A CHARGE of thest was preferred by the petitioner on the 7th October 1878 before t police, who thereupon instituted inquiries which subsequently resulted in their sinding to charge unproved. Meanwhile, on the 15th October, the charge was repeated in a complaint before the Magistrate of the District, who directed the complainant and his was nesses to attend on a particular day, but subsequently, without having examined them of the state of the charge was repeated.

he complainant, referred the matter to the Sub-Deputy Magistrate. The officer having proted the charge to be false, the Magistrate, on the 9th November, wrote upon the solice-report, which had meanwhile, on the 26th October, been submitted to him, the solice-report, which had meanwhile, on the 26th October, been submitted to him, the solice-report, which had meanwhile, on the 19th November a counter-prosecution maders s. 211, 182, and 500 of the Penal Code was sanctioned, and eventually, on the 22nd May 1879, resulted in the petitioner being convicted. While the counter-prosecution was sending, the petitioner, on the 22nd April, applied to the Magistrate to proceed with his complaint according to law, but was informed that his complaint was dismissed. On the blowing day the Magistrate recorded the following order: "Dismissed in accordance with my decision recorded in the police-report under s. 147 of the Criminal Procedure Ide" (Act X. of 1872), corresponding with s. 203 of the new Code of Criminal Procedure (Act X. of 1882). Held that the complaint had been improperly dismissed, and that the order of the Magistrate, dated 23rd April 1879, must be set aside.—Sheikh Irad Alia Nussibunnissa Bibee, 4 C. L. R. 534. [Morris and White, J]. June 13, 1879.]

Where a person has instituted a charge found to be false by the police, a Magistrate, except under exceptional circumstances, is not justified, merely on a perusal of a olice-report, which has found a charge made to be false, in prosecuting the person by thom such charge was preferred, summarily under s. 182 of the Penal Code, but should rocced under s. 211. When a charge is pronounced false by the police, no proceedings hould be taken by a Magistrate suo motu, until a reasonable interval has shown that the umplainant accepts the result of the investigation.—In the Matter of Russick Lal Lillick, 7 C. L. R. 382. [Garth, C.]., and Maclean, J. Nov. 17, 1880.]

Before a person can be put upon his trial for making a false charge under s. 211 of the Penal Code, he must be allowed an opportunity of proving the truth of the combinant made by him; and such an opportunity should be afforded to him, if he desires to the advantage of it, not before the police, but before the Magistrate. Magistrates should dearly understand that, whilst the police perform their proper duty in collecting evidence, is the function of the Magistrate alone to decide upon the sufficiency or credibility of ach evidence when collected.—Govr. v. Karimdad, I. L. R., 6 Cal. 496; 7 C. L. R. 467. Garth, C.J., and Field, J. Dec. 9, 1880.]

A COMMITMENT for trial, under the provisions of s. 211 of the Penal Code, for knowigly instituting a false charge with intent to injure the persons accused, is not illegal,
interest because the complaint which the accused made has not been judicially inquired
to, but is based on the report of the police that the case was a false one.—Empress v.
MLIK ROY, I. L. R., 6 Cal. 582; 8 C. L. R. 255. [Mitter and Maclean, J]. Jan. 13, 1881.]

A CHARGE laid against certain persons before the police having been reported false what body, the person who made the charge complained to the Magistrate of the strict, who directed a fresh investigation. The charge was again reported false, he complainant thereupon filed a petition in which he alleged that the second investition had not been properly conducted, and asked that further evidence might be taken a specified officer. No further investigation having taken place, the complainant was recred to be prosecuted under s. 211 of the Penal Code, and, on trial, was convicted at sentenced. On appeal to the High Court, it was held that the conviction was illest inasmuch as an opportunity had not been afforded to the accused of producing all is evidence in support of the charge made by him. Per Maclean, J.—The proper principle which should guide a Magistrate is that, if no complaint is made before him after reasonable time has elapsed from the conclusion of a police-inquiry, he would be justified proceeding against a person who has made a complaint to the police which has been und to be false; but if a complaint is made, that complaint must be dealt with judicial-lit is unfair even then to proceed against the complainant without hearing any wit-

the new Code of Criminal Procedure (Act. X. of 1872), corresponding with s. 203 the new Code of Criminal Procedure (Act. X. of 1882), to dismiss a complaint without amining witnesses, yet in such a case no sanction for prosecution under s. 211 of the mal Code should be granted.—In the Matter of Chuckrodhur Potti, 8 C. L. R. 289. Mitter and Maclean, JJ. Jan. 20, 1881.]

WHERE a charge had been preferred against a person, and the Magistrate, before whom was heard, after hearing the statement of the complainant, but not those of the witnesses, samissed the complaint, and subsequently, on the application of the person charged, manted him leave under s. 470 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882) to prosecute the complainant for bringing a false charge, held that the proceedings

were not irregular; and that the Magistrate was justified in acting as he had done. Held also that there is a distinction in the proceedings to be adopted when a sanction is given under s. 470 of Act X. of 1872 (or s. 195 of Act X. of 1882); and the institution by the Court of its own motion of proceedings under s. 471 of the Act of 187a (or s. 195 of the Act of 1882).—IN THE MATTER OF GYAN CHUNDER ROY; GYAN CHUNDER ROY e. PROTAS CHUNDER DASS, I. L. R., 7 Cal. 208; 8 C. L. R. 207. [Cunningham and Prinsep, J]. April 1881.]

Upon a frial for bringing a false charge with intent to injure, it appeared that the original complaint was lodged in the Court of the Extra Assistant Commissioner, and a local inquiry by a competent police-officer was directed. The officer reported that the charge was false, and recommended that the prisoner should be prosecuted. The Extra Assistant Commissioner ordered the papers to be sent to the Deputy Commissioner, who ordered the prosecution; and the prisoner was convicted. Held that the conviction was bad. The Extra Assistant Commissioner should, on receipt of the report of the police, have communicated its contents to the prisoner, and afforded her an opportunity bt substantiating her complaint, and should then have decided the case.—In the Marker of Sakhina Bibbe; Emperss v. Grish Chunder Nundi, I. L. R., 7 Cal. 87; 8 C. L. R. 387. [Norris and Tottenham, J]. April 26, 1881.]

A MAGISTRATE should not direct a prosecutor to be put upon his trial under \$.211 of the Penal Code without first giving him an opportunity of obtaining a judicial inquiry into the charge originally preferred by him. The sanction to prosecute contemplated in s. 468 of the Criminal Procedure Code of 1872 (corresponding with s. 195 of the Code of 1882) is not a direction to prosecute, but is a permission granted to a private person to exercise his own unfettered discretion as to whether he will take proceedings or not.—In the Matter of Gridhari Mondul: Gridhari Mondul v. Uchit Jha, I. L. R., 8 Cal. 435; 10 C. L. R. 46. [Pontifex and Field, J]. Dec. 7, 1881.]

Where a Magistrate dismisses a complaint as a false one under s. 147 of the Criminal Procedure Code of 1872 (corresponding with s. 203 of the Code of 1882), and decide to proceed against the complainant under s. 471 of the Code of 1872 (corresponding with s. 476 of the Code of 1882) for making a false charge, he is not bound, before so proceeding, to give the complainant an opportunity of substantiating the truth of the complaint by being allowed to produce evidence before him.—Empress v. Bhowart Parsad, I. L. R., 4 All. 182. [Oldfield, J. Dec. 24, 1881.]

K MADE a report at a police-station accusing R of a certain offence. The police having reported to the Magistrate having jurisdiction in the matter that, in their opinion, the offence was not established, the Magistrate ordered the case to be "shelved." K then preferred a complaint to the Magistrate, again accusing R of the offence. The Magistrate rejected the complaint with reference to the police-report. Subsequently R, with the sametion of the police-authorities, instituted criminal proceedings against K, under s. 182 of the Penal Code, in respect of the report which he had made at the police-station, and K was convicted under that section. Held that, before proceeding against K, the Magistrate should have fully investigated and sifted his complaint for himself, and should not have abrogated the functions imposed on him by law, because the police had reported against the entertainment of the case. The views expressed in the Government v. Karimdad (I. L. R., 6 Cal. 496) concurred in. Held also that K's conviction under s. 182 of the Penal Code was illegal, as the Magistrate had no power to entertain a complaint under that section at the instance of R, the application of s. 182 and the institution of prosecutions under it being limited to the public servant against whom the offence has been committed or to his official superior, as mentioned in s. 467 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882), and it not being intended that those provisions should be enlorced at the instance of private persons. Moreover, if K's complaint was false, his offence was against R, and not against the public servant to whom the complaint was made, and fell within s. 211 of the Penal Code. Ordered that the complaint made by K should be investigated.—EMPRESS v RADHA KISHAN, I. L R., 5 All. 36. [Straight. July 5, 1682.] Concurs in Govt. v. Karimdad, I. L. R., 6 Cal. 496. Explains Queen v. Hurren Ram. 3 N.-W. P. 194. Overrules Empress v. Jugal Kishqre, I. L. R., & All. Dissented from in Poonit Singh v. Madho Bhot, I. L. R., 13 Cal. 250.

J COMPLAINED to the police that she had been raped by a certain person. The police having reported the charge to be false, criminal proceedings were instituted against ber under s. 182 of the Penal Code. In the meantime J made a complaint in Court, again

thanging R with rape. This complaint was not disposed of, but the proceedings against ber under s. 182 of the Penal Code were continued, and she was eventually convicted under that section. Held setting aside the conviction, and directing that J's complaint should be disposed of, that such complaint should have been disposed of before proceedings were taken against her under s. 182.—Empress v. Jammi, L. L. R., 5 All. 387. [Oldfield, J. Mar. 9. 1883.]

R MADE a complaint of theft against S to the police. The police referred the case as false to the Magistrate. The Magistrate summoned R, and examined him, but gave him no opportunity to prove the charge by calling the witnesses named by him. The Magistrate then ordered the case to be struck off the file, and gave sanction to prosecute R. R was subsequently brought before the same Magistrate, and committed to the Sessions, and convicted by the Sessions Court under s. 211 of the Penal Code. Held that, although R had no opportunity of proving his case before he was himself tried, the conviction was not illegal.—RAMASAMI v. QUREN-EMPRESS, I. L R., 7 Mad. 292. Kerman and Kindersley, J.J. Feb. 4, 1884.

A COMPLAINT of offences under ss. 323 and 379 of the Penal Code was referred to the police for inquiry. The police reported that the charge was a false one, and thereupon the Magistrate of the District passed an order, under s. 195 of the Criminal Procedure Code, directing the prosecution of the complainants for making a false charge under s. 211 of the Penal Code. Held that the order under s. 195 of the Criminal Procedure Code should not have been passed until the complainants had been afforded an opportunity of proving their case, which had been thrown out merely on the report of the police. Gost. v. Karimada (I. L. R., 6 Cal. 496; 7 C. L. R. 467) referred to.—Queen-Empress v. Ganga Ram, I. L. R., 8 All. 38. [Brodhurst, J. Dec. 2, 1885.]

A PERSON having laid an information before the police, the police reported the case as false; the informant then appeared before a Magistrate, asking that his case might be ingressigated, and his witnesses summoned. This application was refused, and the Magistrate, after perusing the police-report, passed an order directing him to be prosecuted under s. 211 of the Penal Code. Held that the application to the Magistrate was "a complaint" within the meaning of s. 101 of the Criminal Procedure Code, into which the Magistrate was bound to have inquired. A Magistrate may take cognizance, under ss. 291 and 292 of the Criminal Procedure Code, of an offence brought to his notice by a police-report which affords ground for a suspicion that an offence has been committed; but, as a matter of sound judicial discretion, a Magistrate should not so proceed, and direct that the person suspected be tried until some person aggrieved has complained, or until he has before him a police-report on the subject based on an investigation directed to the offence to be tried, ad in cases of alleged false charges until it is clear that the original charge has been wither heard and dismissed or abandoned. And before the order to prosecute for the false charge is made, the person who made the original charge should be offered an opportunity of supporting it or abandoning it.—QUEEN-EMPRESS v. SHAM LALL, I. L. R., 14 Cal. 707. [Petheram, C. J., and Wilson, Tottenham, Norris, and Ghose, J]. June 22, 1887]

SANCTION TO PROSECUTE.

Where the sanction to a prosecution accorded under s. 169, Code of Criminal Procedure (AC XXV. of 1861), corresponding with s. 195 of the new Code of Criminal Procedure (AC X. of 1882), extended only to one of the persons charged, the High Procedure (AC X. of 1882), extended only to one of the persons to whom the sanction did not apply.—Queen v. Woodurnul Singh, 10 W. R. 24A. [Phear and Hobbouse, J]. Aug. 4, 1868.]

A COLLECTOR, to whom an application is made for a new stamp under cl. 2.8. 50, Act X. of 1862, does not sit as a Court, Civil or Criminal, and the application, therefore, not being a document given in evidence in any proceeding of a Court, s. 170 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882), does not apply to such a case.—Queen v. Gourn Hohum Sein, 11 W. R. 48; 3 B. L. R., A. Cr., 6. [Norman and Jackson: JJ. May 5, 1860]

In a case against the accused under s. 211, Penal Code, the Joint-Magistrate, in the course of the trial, altered the charge from a private one under s. 211 to a public one under s. 182, and convicted the accused on the facts. There being no sanction to prosecute under s. 182, the Sessions Judge referred the case to the High Court. The High Court altered



the conviction to one under s. 211, as the accused was not prejudiced in his trial.—Kirti Ojha, Rajkumar, 7 B. L. R. 29n; 13 W. R. 67. [Loch and Hobhouse,]]. April 30, 1870]

SANCTION was given by the Magistrate for the institution of criminal proceedings against the defendant for having made a false charge against the complainant. The Magistrate dismissed the complaint on the ground that the complainant had taken nostep to prosecute for three months after the sanction was obtained. Held that the Magistrate had power to dismiss the complaint.—PRO., Jan. 9, 1871, 6 Mad. H. C. Rep., Ap., 15. No sanction shall remain in force for more than six months from the date on which it was given—Crim. Pro. Code (Act X. of 1882), s. 195.

The words, "appellate judgment of acquittal," in s. 272 of Act X. of 1872 (corresponding with s. 417 of Act X. of 1882), were meant to include all judgments of an Appellate Court by which a conviction is set aside. A complaint made at a police-station is not made before any Civil or Criminal Court; and, if it proves false, prosecution for it does not require the sanction of any Court under s. 468, Code of Criminal Procedure, corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882).—Govt. of Bengal v. Gokool Chunder Chowdry, 24 W. R. 41. []ackson and McDonell, JJ. Aug. 10, 1875.]

WHERE sanction has been given under s. 468 of Act X. of 1872 (corresponding with s. 105 of Act X. of 1882) by a Deputy Magistrate to a person to prosecute another for bringing a false charge, and such sanction is not proceeded under, it is open to the District Magistrate to take up the case under s. 142 of the Act of 1872 (corresponding with s. 101 of the Act of 1882) without complaint.—EMPRESS v. NIPCHA, I. L. R, 4 Cal. 712. [Jackson and Tottenham, JJ. Dec. 2, 1878.]

A CHARGE of thest was made before the police, and while inquiries, which afterwards resulted in the charge being found by the police not to be proved, were pending, the charge was repeated in a complaint before the Magistrate of the district, by whom the matter was handed over to the Sub-Deputy Magistrate, who reported the charge as false. Whereupon the Magistrate directed the police to enter the charge as false, but without ordering the formal dismissal of the petition of the complainant. On the application of the accused, a counter-prosecution under ss. 211, 182, and 500 of the Penal Code was the sanctioned. and the case sent to the Deputy Magistrate for trial. That officer discharged the accused on the ground that the sanction of the Magistrate was illegal, as there had been, he alleged, (1) no judicial investigation as to the original charge; (2) no formal dismissal of the complaint; and (3) the witnesses produced by the complainant had not been all examined Held that the Deputy Magistrate was bound to accept the sanction made by a superior Court as valid, and to leave the accused to question it before a competent Court, it so advised; that a prosecution may be maintained in respect of a false charge made to the police, or contained in a complaint which has been dismissed under s. 147 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 203 of the new Code of Criminal Procedure (Act X. of 1882), although there has been no judicial investigation; and that accordingly the Deputy Magistrate ought to have tried the charge before him.—Nustrus-NISSA BIBBE v. SHEIK ERAD ALI, 4 C. L. R. 413. [Ainslie and Broughton, J]. April 3. 1879.]

B CHARGED certain presons before a police-officer with theft. Such charge was brought by the police to the notice of the Magistrate having jurisdiction, who directed the police to investigate into the truth of such charge. Having ascertained that such charge was false, such Magistrate took proceedings against B on a charge of making a false charge of an offence, an offence punishable under s. 211 of the Penal Code, and convicted him of that offente, Held that, as such false charge was not preferred by B before such Magistrate, the offence, of making it was not a contempt of such Magistrate's authority and the provisions of ss. 468 and 473 of Act X. of 1872 (corresponding with s. 195 of Act X of 1882) were inapplicable, and such Magistrate was not precluded from trying B himsel nor was his sanction or that of some superior Court necessary for B's trial by another officer. Empress v. Kashmiri Lal (I. L. R., I All. 625) distinguished. Observations by Stuat C.J., on the careless manner in which the charge in this case was framed.—Empress v. Baldeo, I. L. R., 3 All. 322. [Stuart, C.J., and Pearson, J. Nov. 16, 1880.]

A SANCTION for a prosecution for making a false charge under s. 211 of the Penal Code, without hearing all the witnesses whom the person accused of making the false charge wishes to produce, is illegal. The High Court has power to quash an illegal

ment at any stage of the case.—Емркезя v. Shibo Венака, I. L. R., 6 Cal. 584;

THERE being nothing in the law requiring that sanction to prosecute under s. 211 of ial Code should only be granted upon application by a private prosecutor, a Dishgistrate is competent, under s. 468 of the Code of Criminal Procedure (Act X. 5, corresponding with s. 105 of the new Code of Criminal Procedure (Act X. of this own motion, to direct a prosecution where a complaint has been entertained find to be false by a Magistrate subordinate to him. There being no abetiment of ince after it has been committed, a person cannot be convicted of abetting the of instituting a false charge, on evidence which shows only that he gave evidence out of a charge found to be false. Duty of Judge in charging a jury discussed.—

IMATTER OF JUGUT MOHINI DASSI, 10 C. L. R. 4. [McDonell and Tottenham, J].

1. 1881.]

Is competent for a Court which has granted sanction to prosecution under s. 195 of minal Procedure Code to give a fresh sanction, if the one previously granted has by efflux of time. The limitation of six months mentioned in s. 195 means that a rate shall not take cognizance of a case under a sanction which is more than six old, not that the whole prosecution must be completed within that period. Held be, where sanction to a prosecution had been granted under s. 195, and the prosecution been instituted, and the Magistrate, in consequence of evidence of the complainant ag procurable, had ordered "the case to be shelved for the present," and the comit, after the six months mentioned in s. 195 had expired, applied to the Magistrate can the proceedings, that it was competent for the Magistrate, having once taken nace of the case, and it still remaining on his file undetermined, to take it up again moment, and proceed with the prosecution without fresh sanction.—In the Matter Lab Singh v. Debi Prosad, I. L. R., 6 All. 45. [Straight, Offg. C.]. July 28,

MAGISTRATE of the first class, after considering the result of an investigation of a fficer under s. 202 of the Code of Criminal Procedure, dismissed a complaint as false, sed an order sanctioning the prosecution of the complainant for an offence punisheder a. 311 of the Penal Code, and directed a Third-class Magistrate to hold a prejuding, the offence being cognizable by the Court of Session only. Held that, was no application before the First-class Magistrate, for sanction to prosecute, the most be taken to be a complaint made by the said Magistrate, and therefore, under the Code of Criminal Procedure, the Third-class Magistrate had no jurisdiction lany inquiry. Held also that the First-class Magistrate ought to have held a prey inquiry under s. 476 in order that the complainant might have an opportunity of the truth or bona fides of the complaint.—QUBENT. CHANDRAMMA, I. L. R., 7 Mad. Turner, C.J., and Muttusami Ayyar, J. Oct. 26, 1883.]

PROSECUTION of a charge under s. 211 of the Penal Code should not be granted s. 195 of the Criminal Procedure Code as a matter of course, but only when the commit can satisfy the Court that the interests of justice require a prosecution, and there fong prima-facie case against the accused. Held therefore, where S, who had been fore the Court of Session for an offence, and acquitted, applied to the Court, in softhe criminal proceedings which had been instituted against him, for sanction to the G for abetment of an offence under s. 211 of the Penal Code, and the Sessions tranted the sanction, and there was nothing on the record of the criminal case or lodge's proceedings to show on what grounds G was accused of abetting a false for on what grounds the Judge gave the sanction; that, before the Judge gave the should have satisfied himself, by examination of S or other inquiry, whether sufficient grounds in fact for accusing G, and whether there were good prima-facie a for suspecting G of abetting a false charge, and permitting a prosecution.—In the a for Gauri Sahai, I. L. R., 6 All. 114. [Oldfield, J. Nov. 23, 1883.]

DISTRICT COURT has jurisdiction under s. 195 of the Code of Criminal Procedure of 1882) to revoke or grant a sanction granted or refused by a Subordinate Judge's VENKATA v. MUTTUSAMI, I. L. R., 7 Mad. 314. [Turner, C.J., and Brandt, J., 1884.]

EANCTION to prosecute, when applied for subsequently to the termination of the prois in course of which the offence is alleged to have been committed, ought not to ted, unless the person against whom the sanction is applied for had had notice of

CHAP, XI.

the application and an opportunity of being heard .- ABBILARH SINGH v. KHUB LALL, I. L. R., 10 Cal. 1100. [Field and Norris, J]. Aug. 19, 1884.] But see the following ruling:-

No notice is necessary to the person against whom it is intended to proceed before the Court, before which the alleged offence has been committed, can, under s. 195 of the Criminal Procedure Code, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section.—IN THE MATTER OF KRISHNANUND DAS; KRISH-NANUND DAS v. HARI BERA, I. L. R., 12 Cal. 58. [Pigot and O'Kinealy, JJ. Sep. 22. 1885.

WHEN Subordinate Courts grant sanction to prosecute under s. 195 of the Crimical Procedure Code, it is incumbent on them so to frame the proceedings before them as to enable the High Court to satisfy itself from the record whether the application for sanction has been properly granted or not. A Magistrate, in disposing of a charge of thest, delivered the following judgment: "The charge of thest of doors and windows is not proved at all against the accused. They are acquitted." There was no further record of the proceedings. Immediately on the judgment being delivered, the pleader appearing for the accused applied for sanction to prosecute the complainant under ss. 182 and 211 of the Penal Code. The Magistrate refused to hear the application then, on the ground that it was not the proper time fixed by him to hear applications. The attorney for the complainant who had expressed his willingness to have the application heard and disposed of there and then, intimated that he was prepared to show cause why sanction should not be granted, and asked that notice of any future application might be given to the complainant. The accused renewed the application the following day without notice to, and in the absence of, the complainant or his attorney, and the Magistrate granted the sanction asked for. On an application to the High Court to revoke the sanction, held that the Magistrate did not exercise a proper discretion, under the circumstances, in neglecting to give the complainant notice of the application, and an opportunity of being heard. Held further, that the mere fact of the charge laid by the complainant not having been proved was not in itself sufficient ground for granting sanction to prosecute him under ss. 182 and 211 of the Penal Code, and as, beyond the judgment of the Magistrate, there was nothing on the second to Snow that there were sufficient grounds for granting the sanction, it should be revoked. -KEDAR NATH DAS v. MOHESH CHUNDER CHUCKERBUTTY, I. L. R., 16 Cal. 66s. [Prinsep and Hill, JJ. May 13, 1889.]

WHERE a Deputy Commissioner issued a sanction to prosecute the accused upon an express application made on behalf of a certain person against whom a charge of torture had been made, and which he found, for reasons stated in his judgment, to be false, held taking the order to have been one made under s. 195 of the Code of Criminal Procedure. that it was a proper sanction, inasmuch as it was given to a contemplated prosecution by a definite person. Semble, on the supposition, that the order was one under s. 476 of the Criminal Procedure Code, that it was not necessary for the validity of an order under that section that there should be any evidence on the record contradicting the case which was thought to be false, or that there should be a preliminary inquiry. Although it may sometimes well be that a preliminary inquiry ought to be held, the adoption of a-rigid rule to that effect is neither rendered imperative by the law, nor is it desirable. In the Matter of Mutty Lall Ghose (I. L. R., 6 Cal. 308), The Queen v. Baijoo Lall (I. L. R., 1 Cal. 450), and Khepu Nath Sikdar v. Girish Chunder Mukerjee (1. L. R., 16 Cal. 370) referred to and distinguished.—BAPBRAM SURMA v. GOURI NATH DUTT, I. L. R., 20 Cal. 474 and Hill, JJ. Nov. 2, 1892.

THE proceeding under s. 195 of the Code of Criminal Procedure, by which an order granting or refusing to grant sanction to prosecute may be set aside, is a proceeding in revision, and not by way of appeal.—Mehdi Hasan v. Tota Ram, I. L. R., 15 Alt. 61. [Knox, J. Nov. 19, 1892.]

A COMPLAINT was made before a Magistrate which involved a charge of deceity against the accused person and others. The Magistrate, in dealing with the case, proceeded under s. 200 of the Code of Criminal Procedure, and, finding no case of dacoity prima facie established, proceeded to frame charges under s. 254 of the Code, charging the accused with offences under ss. 380 and 448 of the Penal Code, vis., theft in a building and criminal trespass. Having heard the whole of the evidence, he then acquitted the accused under s. 258 of the Code, and gave him sanction under s. 195 to prosecute the combininant under s. 211 of the Penal Code. The complainant then applied to the Sessions Judge to revoke that sanction. The Sessions Judge proceeded to consider the whole case, and nading that a proper inquiry had not been made, and all evidence available not taken, and that, had this been otherwise, a Sessions case might have been established, directed the Magistrate to hold a further inquiry, and to proceed, in accordance with the result of such inquiry, either to commit the accused to the Sessions, or grant the sanction, as the case might be. Held that the Sessions Judge had exercised a jurisdiction not vested in him by law. Acting as a Revision Court he could send for the record for any purpose mentioned in s. 436, but he was not competent under s. 436 to direct a fresh inquiry, inasmuch as the accused had not been improperly discharged of an offence triable exclusively by a Court of Session, but had been acquitted of an offence within the Magistrate's jurisdiction. The Sessions Judge had, in fact, exercised the jurisdiction vested in him as an Appellate Court under s. 423 as if an appeal had been presented to him from an order of an acquittal; such powers in revision cases are only conferred on the High Court.—Baijanath Pandry & Gauri Kanta Mandal, I. L. R., 20 Cal. 633. [Prinsep and Ameer Ali, J]. Feb. 3, 1893.]

A' HEAD ASSISTANT MAGISTRATE sanctioned a prosecution under the Criminal Procedure Code, s. 195, on the charge of preferring a false complaint, and forwarded his proceedings to the Deputy Magistrate of another division of the district who ordinarily had no unsdiction to try offences committed in the division under the Head Assistant Magistrate, ited that the Deputy Magistrate had jurisdiction to try the charge.—Queen-Empress u. Nagappa, I. L. R., 16 Mad. 461. [Shephard and Best, J]. Mar. 28, 1893.]

S. 105, Criminal Procedure Code (Act X. of 1882), runs as follows:-

No Court shall take cognizance-

(a) of any offence punishable under ss. 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate;

(b) of any offence punishable under s. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 211, or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

(c) of any affence described in s. 463, or punishable under s. 471, 475, or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court or of some other Court to which such Court is subordinate.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and no such sanction shall remain in force for more than six months from the date on which it was given.

For the purposes of this section, every Court, other than a Court of Small Causes. shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

CHARGING ON SUSPICION.

NIHALA informed a police-sergeant that a burglary had been committed, and that he suspected Ramkishen. In consequence of this information, Ramkishen's premises were searched, and some property belonging to Nihala was found. Ramkishen was arrested, but upon, investigation the Magistrate found that Nihala had himself placed the property where it was discovered Ramkishen was accordingly discharged, and he then brought a charge against Nihala under s. 211, who was committed to the Deputy Commissioner

for trial, but acquitted on the ground that he (Nihala) had never made any charge against Ramkishen, but had merely stated that he suspected him. On the revision side, the Clint Court held that the facts disclosed an offence under s. 211, and directed a new trial—Crown v. Nihala, Panj. Rec., No. 14 of 1872.

WHERE a person, who is interested in the matter, or has a certain official responsibility, says to a police-officer, "A tells me that X has committed a certain offence, and B and C confirm the statement, and I accordingly suspect X," and follows up that statement by an application to have X's house searched, he prefers a charge against X. If such charge be false, he may be convicted under s. 211 of the Penal Code.—QUEEN v. HUMBO-MAN LALL, 19 W. R. 5. [Jackson, J. Dec. 4, 1872.]

A STATEMENT made to the police of a suspicion that a particular person had committed an offence is not a "charge" within the meaning of s. 211 of the Penal Code, nor does it amount to the institution of a criminal proceeding, and the person making the statement cannot, on the suspicion being proved to be unfounded, be convicted under that section.—In the Matter of Bramanund Bhattacherjee, 8 C. L. R. 233. [Postifex, Mitter, and Maclean,]]. Mar. 10, 1881.]

THE principle of the following ruling, which was one delivered under s. 182 of the Penal Code, would also apply to s. 211 of the same Code: "S 182 of the Penal Code must be read as an entire section, and, when so read, it applies to those cases in which the are induced, upon information supplied to them, to do or omit to do something which i affect some third person, and which they would not have done had they known the tests of the matter laid before them. The facts of the case appear in the following judgment, which is reproduced in full: Petheram, C.J.—We think that this rule must be made absolute to set aside the conviction. The facts of the case are that a person went on some occasion and informed the police that he had been robbed in the street of a shawi, but in the statement which he made to the police he did not indicate any particular person or describe any person in such a way as by any possibility could be supposed to implicate any one as the person who committed the robbery. All he said was that he was robbed by a person whom he did not see. So that in the statement that he made he did not say anything to cast suspicion on any one in particular. Under these circumstances, there was no offence within the meaning of s. 182 of the Penal Code. That section provides that any person who gives any information to a public servant with the intention of inducing him to put his powers in force to the injury or annoyance of any person, or to do or omit anything which such public servant would not have done or omitted to do if the true state of facts respecting which such information was given had been known to him, shall be pusished in a certain way there specified. As it seems to us, that section must be read as a whole, and, taken as a whole, we think it applies to those cases in which the police are induced, upon the information supplied to them, to do or omit to do something which might affect some third person, and which they would not have done if they had known the true state of things. Upon the information which was given to these police constables, all that they could be justified in doing was to examine the informant as to what had happened to him, and then make such inquiries as the result of that examination might render desiraable, but they would have no right to interfere with any one or search any one's house, because there were no circumstances brought to their knowledge by the information which this man gave which entitled them to suppose that any particular individual was guilty of any offence. Under the circumstances, the most that the statement of the accused expounts to is, that it was untrue, and was made for the purpose of hoaxing the police. No doubt, that is a very wrong thing for any man to do. In the first place, it is wrong to tell lies; and, in the second place, it is extremely wrong to take up the time of Government servants by putting them to useless inquiries under circumstances of this kind; but I do not think myself that such conduct comes within the meaning of this section, or amounts to any thing more than a hoax, for which no punishment is provided by the Code. Under these circumstances, we cannot make a crime when it is not made one by the Code, or provide a punishment for it. The rule will, therefore, be made absolute to set aside the conviction; the prisoner will be discharged."—IN THE MATTER OF GOLAM AHMED KAZI, I. L. R., 14 Cal. 314. • Petheram, C.J., and Beverley, J. Feb. 19, 1887.]

PUNISHMENT FOR MAKING FALSE CHARGE.

A PRISONER convicted under the second clause of s. 211 of the Penal Code should be sentenced to imprisonment, with or without fine, and not to fine alone.—Reg. v. Rama BIN RABHAJI, 1 Bom. H. C. R. 34. [Forbes and Warden,]]. Aug. 5, 1863.]

[224]

Discussion as to the punishment sufficient for women charged with bringing a false charge of dacoity.—Queen v. Nathoo Doss, 3 W. R. 12. [Campbell, Jackson, and Glover,]]. May 15, 1865.]

. THE offence of making a false charge, and the offence of intentionally giving false evidence, are not cognate offences, or parts of the same offence, but may be punished separately.—QUBEN v. ABDOOL AZEEZ, 7 W. R. 59. [Kemp and Glover, JJ. April 27, 1867.]

REMARKS on the comparatively light sentence passed without any reason in a case where a false charge of murder was preferred and persisted in.—QUEEN v. PEELUMLOLL PUDDHUN, 7 W. R. 75. [Seton-Karr, J. May 28, 1867.]

WHERE no criminal proceeding is instituted on a false charge of an offence of the nature described in the latter part of s. 211 of the Penal Code, the person making such charge is punishable only under the first part of that section.—Empress v. Parahu, I. L. R, 5 AN. 598. [Brodhurst, J. May 22, 1883.] Concurs in *Empress v. Piram Rai*, I. L. R, 5 AN. 215.

Where the accused, who was a head-constable, was found guilty of making a false charge under s. 211, and of giving false evidence under s. 193 of the Penal Code, and the Sessions Judge passed sentences of three months' simple imprisonment for each offence, and, taking into consideration the accused's past conduct, directed that the sentences should an concurrently, held that the sentences were inadequate and illegal. Accordingly, the authorics were enhanced to three months' rigorous imprisonment for each offence; and, as the two offences were distinct, the High Court directed, under s. 35 of the Criminal Prosider Code (Act X. of 1882), one sentence to commence after the expiration of the other.

swince Code (Act X. of 1882), one sentence to commence after the expiration of the other.

Puers v. Abdool Asses (7 W. R. 59) followed.—QUEEN-EMPRESS v. PIR MAHOMED,

L. R., 10 Bom. 254. [Birdwood and Jardine. J]. Dec. 10, 1885.]

Manapital offence;

Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to reason to believe to be the offender, with the intention of the least o

and if the offence is purished

#set if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine:

and, if the offence is punishable with imprisonment which may extend to Presy. Mag. of
with both.

"'Offence' in this section includes any act committed at any place out Warrant.

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Exception.—This provision shall not extend to any case in which the harour or concealment is by the husband or wife of the offender.

P. C. 30.] Wife on Congletized by Google

^{*} This definition of "offence" has been inserted by Act III. of 1894, s. 7. Har brown [225]

Ilbustration.

 A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

Rulings.

In this section the word " offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine. -S. 40, Penal Code.

To support a conviction under s. 212, there must be evidence (a) of an offence committed which the accused could have intended to screen, and (b) of harbouring or concealing the offender. A chaukidar and a patwari concocting together, and letting a thief go do not come under s. 212.—Crown v. Kala Sing, Panj. Rec., No. 21 of \$867. .

S. 108 of the Penal Code does not contemplate any acts of subsequent abetment, or provide for the punishment of such offences, except when they are such as are defined in ss. 212 to 218.—QUEEN v. PAUN PUNDAH, 18 W. R. 28; 9 B. L. R., Ap., 16. [Kemp and Glover, JJ. July 11, 1872.]

To justify a conviction under s. 212 of the Penal Code, it is necessary that there should be an offence committed, and consequently an offender who has been harboured or concealed. Empress v. Abdul Kadir (I. L. R., 3 All. 279) referred to.—Queen-Empress v. FATEH SINGH, I. L. R., 12 All. 432. [Straight, J. Dec. 6, 1889.]

Ct. of Ses. Uncog. .Warrant Bailable. Not comp. 213. Whoever accepts, or attempts to obtain, or agrees to accept, and

Taking gift, &c., to screen an offender from punishment-

gratification for himself or any other person, or any restitution of property to himself or any other person in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of his not 3 proceeding against any person for the purpose of bringing him to legal punish

If a capital offence;

ment, shall, if the offence is punishable with death be punished with imprisonment of either description

for a term which may extend to seven years, and shall also be liable to fine;

Ct. of Ses., Presy. Mag., or Mag. of 1st class.

If punishable with transportation for life, or with imprisonment.10 7/2

and, if the offence is punishable with transportation for life, or with impri sonment which may extend to ten years, shall b punished with imprisonment of either description in a term which may extend to three years, and shall also be liable to fine;

Presy. Mag.,

and, if the offence is punishable with imprisonment not extending to te or Mag. of 1st years, shall be punished with imprisonment of the description provided for the class, or Court offence for a term which may extend to one-fourth part of the longest term offence triable, imprisonment provided for the offence, or with fine, or with both.

> In this section the word "offence" denotes a thing punishable under this Code under any special or local law as defined in this Code. -S. 40, Penal Code.

> A DEPUTY MAGISTRATE vested with the powers of a Subordinate Magistrate of the second class is not competent to initiate a charge under s. 213.—In re JHOOMUCK CE MAR, 6 W. R. 90. [Kemp and Markby, JJ. Dec. 13, 1866.]

Ct. of Ses. Uncog. Warrant. Bailable. Not comp.

214: Whoever gives or causes, or offers or agrees to give or cause, an gratification to any person, or to restore or cause the Offering gift or restoration of property in consideration restoration of any property to any person, in cons of screening offenderderation of that person's concealing an offence, of his screening any person from legal punishment for any offence, or of his no CHAP. XI.) OFFENCES AGAINST PUBLIC YUSTICE. SECS. 215, 216.

proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, If a capital offence. be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

and, if the offence is punishable with transportation for life, or with impri- Ct. of Ses.,

If punishable with transportation for life, or with inposonment.

sonment which may extend to ten years, shall be Presy. Mag., punished with imprisonment of either description for Mag. of 1st punished with imprisonment of either description for class. a term which may extend to three years, and shall also be liable to fine:

and, if the offence is punishable with imprisonment not extending to ten or Mag. of 1st years, shall be punished with imprisonment of the description provided for the class, or Court offence for a term which may extend to one-fourth part of the longest term of by which offence triable. imprisonment provided for the offence, or with fine, or with both.

Exception.—The provisions of sections 213 and 214 do not extend to any tase in which the offence may lawfully be compounded.*

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

A WARRANT-CASE, of a nature not compoundable under s. 214 of the Penal Code, was "dismissed" on the parties coming to an amicable settlement. Held that the "dismissal" was equivalent to a discharge under s. 215 of the Code of Criminal Procedure, and the composition did not affect the revival of the prosecution, if that should otherwise be hought necessary or expedient.—REG. v. DEVAMA, I. L. R., 1 Bom. 64. [West and Na-Dec. 8, 1875.] Mei Haridas, ||.

The accused agreed to give Rs. 10 to Saminatha Pillai in consideration of his not iring evidence against Kolundavelu, who was charged with the offences of house-break- 🗻 by night and theft in a building. Saminatha Pillai gave evidence against Kolunda-the, who was, however, acquitted. The accused was charged under the Penal Code, s. 14, but was acquitted. Held that the acquittal was right.—QUEEN-EMPRESS v. SAMINA-LA, I. L. R., 14 Mad. 400. [Muttusami Ayyar and Farker,]]. Dec. 4, 1090.]

215. Whoever takes, or agrees or consents to take, any gratification under Presy. Mag. Taking gift to help to recopretence or on account of helping any person to recover any moveable property of which he chall have class. ten deprived by any offence punishable under this Code, shall, unless he uses Warrant.

Bailable.
Not comp. personnent of either description for a term thich may extend to two years, or with fine, or with both.

Harbouring an offender o has escaped from cusdy, or whose apprehension been ordered—

216. Whenever any person convicted of, or charged with, an offence, being in lawful custody for that offence, escapes from Presy. Mag., ing in lawful custody for that offence, escapes from or Mag. of such custody, or whenever a public servant in the 1st class: exercise of the lawful powers of such public servant, Cognizable. Warrant. orders a certain person to be apprehended for an Bailable.

stence, whoever, knowing of such escape or order for apprehension, harbours Not comp. r conceals that person, with the intention of preventing him from being appreended, shall be punished in the manner following, that is to say:-

if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punlf a capital offence; ished with imprisonment of either description for a **Im which** may extend to seven years, and shall also be liable to fine;

* This exception has been substituted by Act VIII. of 1882, s. 6, for the one originalenacted; and the illustrations have been repealed by Act X. of 1882...

OFFENCES AGAINST PUBLIC JUSTICE. CHAP. AL. SECS. 216A-217.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

Presy. Mag. or Mag. of 1st class, or court by which offence

triable. Cognizable. Warrant. . Bailable. Not comp.

Ct. of Ses,, Presy. Mag. or Mag. of 1st bers or dacoits. class. Cognizable. Warrant. Bailable.

If punishable with transportation for life, or with imprisonment.

if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

and, if the offence is punishable with imprisonment which may extend to one year, and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended In this section the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term

of six months or upwards, whether with or without fine. -S. 40, Penal Code. 216A.* Whoever, knowing, or having reason to believe, that any persons are about to commit, or have recently committed, Penalty for harbouring robrobbery or dacoity, harbours them or any of them, with the intention of facilitating the commission of such robbery or dacoity, or of screening them or any of them from punishmen, shall be punished with

also be liable to fine. Explanation.—For the purposes of this section it is immaterial whether the robbery or dacoity is intended to be committed, or has been committed within or without British India.

rigorous imprisonment for a term which may extend to seven years, and shall

Exception.—This provision does not extend to the case in which the harbour is by the husband or wife of the offender. 1 - Sec. 186

216B.* In sections 212, 216, and 216A, the word 'harbour' includes the supplying a person with shelter, food, drink, money Definition of 'harbour' in clothes, arms, ammunition, or means of conveyance sections 212, 216, and 216A. or the assisting a person in any way to evade apprehension.

Public servant disobeying a direction of law with intent to save person from punishment

or property from forfeiture.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduc himself as such public servant, intending thereby ! save, or knowing it to be likely that he will thereb save, any person from legal punishment, or subject

him to a less punishment than that to which he is liable, or with intent to save or knowing that he is likely thereby to save, any property from forfeiture, or an charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with bot

"Offence" in this section includes also any act or omission of which a pe son is alleged to have been guilty out of British India, which, if he had bee guilty of it in British India, would have been punishable as an offence, and i which he is, under any law relating to extradition, or under the Fugitive Offe ders Act, 1881, or otherwise, liable to be apprehended or detained in custol in British India; and every such act or omission shall, for the purposes of the

228 ERRATUM.

The definition of "Offence" as given under section 217 should be inserted us the first paragraph of section 216.—See s. 23 of Act X of 1886.) C

Not comp.

Presy. Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

^{*} Ss. 216A and 216B have been inserted by Act III. of 1894, s. S.

south, be deemed to be punishable as if the accused person had been guilty of it in British India.*

It is only necessary for a conviction under s. 217 of the Penal Code to show that the prisoner knew that the person he released was in danger of punishment, and that the prisomer released such person with the intention of saving him .- QUEEN v. ABDOOL JALEEL, W. R., Sp., 5. [Jackson, J. Feb. 2, 1864.]

UNDER the latter portions of ss. 217 and 218, the actual guilt or innocence of the aleged offender is immaterial, if the prisoner believes he is guilty, and intends to screen him.—QUEEN 9. HURDUT SURMA, 8 W. R. 68; 3 Mad. Jur. 53. [Seton-Karr and Macpherson,]]. Sep. 7, 1867.]

SEVERAL persons were apprehended at night-time on suspicion of having committed spale homicide. The police-officer tied them together by the hands, and kept them in police-station. The prisoners escaped in the course of the night. To render s. 217 applicable, two conditions must be fulfilled: 1st, there must be an intentional disobedience of a rule of law; and, there must be a knowledge that the offender, by disobedience, will save a person from legal punishment. If the police-officer's intention in keeping the prisoners in the village was merely to wait until it was more convenient to start, the disobedience of this rule of law was not such a disobedience as this section contemplates. In this case it was held that the police-officer had not committed an offence under s. 217.—Reg. v. - Waptum Chund, Panj. Rec., No. 18 of 1871.

WHERE a village-accountant and a village-munsif's peon had been convicted, under s. 227 of the Penal Code, of having disobeyed the direction of law contained in Act X. of 1872, s. 90 (corresponding with Act X. of 1882, s. 43), held that they were wrongfully convicted as not bearing the character which raises the obligation under the latter section. The direction of the law mentioned in s. 217, Penal Code, means a positive direction of the law mentioned in s. 217, Penal Code, means a positive direction of is such as those contained in ss. 80 and 90 of the Criminal Procedure Code of 1872 (corresponding with ss. 44 and 45 of Act X, of 1882), and cannot be made to extend to the more general obligation on every subject not to stifle a criminal charge.—In re RAMINIM the Section ?

NATARY I. J. R., 1 Mad. 266. [Innes and Kernan, J]. Mar. 7, 1877.]

THE accused was charged under s. 217 of the Penal Code; but the charge did not distinctly state what the direction of the law was which he disobeyed, and how he disobeyed it. Held that, when accused has been convicted on a charge expressed in vague terms, the prosecution on appeal should be limited to the particular sense in which the charge has been Aurstood at the trial.—Imperatrix v. Baban Khan, I. L. R, 2 Bom. 142. TWest and Pinhey,]]. Aug. 1, 1877.]

It is sufficient, for the purpose of a conviction under s. 217 of the Penal Code, that the accused has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a public servant, and that he has done this with the intention of saving a person from legal punishment; it is not necessary to show that, in point of fact, the person so intended to be saved had committed an offence, or was justly liable to legal punishment.— EMPRESS v. AMIRUDDEEN, I. L. R., 3 Cal. 412; I C. L. R. 483. [Jackson and Cunningham,]]. Feb. 12, 1878.]

Public servant framing incorrect record or writing with intent to save person from hment or property from

218. Whoever, being a public servant, and being, as such public servant, Ct. of Ses. charged with the preparation of any record or other Warrant. writing, frames that record or writing in a manner Bailable. which he knows to be incorrect, with intent to cause, Not comp. or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with

intitut thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is skely thereby to save, any property from forfeiture, or other charge to which it is hable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

^{*} This paragraph has been inserted by AR X. of 1886, s. 23.

THE intention is an essential ingredient in the offence contemplated in s. 218.—QUEEN v. Shama Churn Roy, 8 W. R. 27. [Jackson and Hobhouse, JJ. June 25, 1867.]

WHERE a person is charged under s. 218 with framing a report incorrectly, or under s. 201 with giving false information with intent to save offenders from punishment, the issue to be tried is, not whether such alleged offenders were, in fact, guilty or not, but merely the belief and intention of the prisoner in respect to their guilt.—QUEEN v. HURDUT SURMS, 8 W. R. 68. [Seton-Karr and Macpherson, JJ. Sep. 7, 1867.]

A KULKARNI who makes a false report with reference to an offence committed in his village with intent, &c., is punishable under s. 218 of the Penal Code. - REG. v. MALHAR RAMCHUNDRA, 7 Bom. H.C. R. 64. [Gibbs and Melvill, J]. Aug. 11, 1870.

A POLICE-OFFICER negligently or improperly submitting an incorrect report of a local investigation may be punished under s. 29, Act V. of 1861, in cases where the proof is insufficient to bring the case under s. 218, Penal Code.—Reference in the Case of BORODA KANT MOOKHOPADHYA, 15 W. R. 17. [Norman, Offg. C.J., and Loch, J. Feb. 11, 1871.]

S. 108 of the Penal Code does not contemplate any acts of subsequent abetment, or provide for the punishment of such offences, except when they are such as are defined in SS. 212 to 218.—QUEEN v. PAUN PUNDAH, 18 W. R. 28; 9 B. L. R., Ap., 16. [Kemp and Glover, JJ. July 11, 1872.]

WHERE a chaukidar was charged under s. 218, Penal Code, with having made a false entry in a chaukidari attendance-book, with a view to support a charge which was made against a sub-inspector of having made a false report regarding the length of absence from duty of another chaukidar, and thereby to cause loss or injury to the sub-inspector, it was held that the intention was too remote to fall within s. 218.—QUEEN v. JUNGLE LALL, 19 W. R. 40. [Kemp and Pontifex,]]. Mar. 1, 1873.

S was charged with the preparation of a certain record, and was in the habit of preparing it from certain abstracts made and read to him by D. D made and read false abstracts, whereby an incorrect record was prepared. The Court was of opinion that D could and strictly be held to have committed the offence described in s. 218 of the Penal Code. He was guilty, however, of abetment of the offence described in that section, and not the less so that S had no guilty knowledge or intention in the matter.—Queen v. Вкіј Моних Lal, 7 N.-W. Р. 134. [Pearson, J. Jan. 25, 1875.]

L was charged by S with offences under ss. 193 and 218, Penal Code, and also accused of acts amounting to offences punishable under s. 466 with seven years' imprisonment. The Magistrate directed his discharge, whereupon L applied to the Court of Session, and S was committed for trial charged under s. 218, and acquitted by the Court of Session. The Court of Session then, under Act X. of 1872, s. 472 (corresponding with Act X. of 1882, s 477). charged L with offences punishable under ss. 193, 195, 211, and 211 and 109, Penal Code, and committed him for trial. Held that such commitment was not bad, because it included the charge under s. 493, such an offence not being exclusively triable by a Court of Session.—EMPRESS v. LACHMAN SINGH, I. L. R., 2 All. 398. [Stuart, C.J., and Spankie,]. June 11, 1879.]

A PUBLIC SERVANT, in charge, as such, of certain documents, having been required to produce them, and, being unable to do so, fabricated and produced similar documents, with the intention of screening himself from punishment. Held that such fabricated documents, not being records or writings with the preparation of which such public servant, as such, was charged, he could not legally be convicted under s. 218 of the Penal Code; nor, such documents not being forgeries, as they were not made with the intent specified in s. 463. could be be legally convicted under s. 471.—EMPRESS v. MAZHAR HUSAIN, I. L. R., 5 All 553. [Stuaft, C.J., and Straight, Oldfield, Brodhurst, and Tyrrell, JJ. Mar. 19, 1883.]

A POLICE-OFFICER, who had suppressed a document entrusted to him to forward to his superior officer, made a false entry in his official diary that the document had been so forwarded, intending that, if he were prosecuted under the Police Act for suppressing the document, such entry might be used as evidence in his behalf that he had so forwarded the document. Held that, inasmuch as to constitute the offence of fabricating false evidence, defined in s. 192 of the Penal Code, the evidence fabricated must be admissible evidence, and as, if such police-officer had been prosecuted under the Police Act, the entry in the diary would not have been admissible in his behalf, though, contrary to his intention, it might have been used against him, such police-officer was

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improperly convicted, in respect of such entry, of fabricating false evidence punishable under s. 193 of the Penal Code. Held also that, such police officer's intention in making such entry being to screen himself from punishment, he was not punishable under s. 218 of the Code.—Empress v. Gauri Shanker, I. L. R., 6 All. 42. [Straight, J. July 24, 1883.]

A TREASURY-ACCOUNTANT was convicted of offences under ss. 218 and 465 of the Penal Code under the following circumstances: A sum of Rs. 500, which was in the treasury, and was payable to a particular person through a Civil Court, was drawn out and paid away to other persons by means of forged cheques. After the withdrawal of the Rs. 500, but before such withdrawal had been discovered, the representative of the payee applied for payment. The prisoner then, upon two occasions, wrote reports to the effect that the Rs. 500 in question then stood at the payee's credit as a revenue-deposit, and that it was about to be transferred to the Civil Court. Upon the first of these reports, an order was signed by the treasury-officer for the transfer of the money to the Civil Court concerned, and to that such transfer, a cheque was prepared by the sale muharrir, which, as originally drawn up, related to the sum of Rs. 500 already mentioned. The signature of the cheque by the treasury-officer was delayed for some time, and meanwhile the cheque was altered by the prisoner in such a manner as to make it relate to another deposit of Rs. 500 which had been made subsequently to the above, and to the credit of another person. The result of this was the transfer of the second payee's Rs. 500 to the Civil Court, as if it had been the first Rs. 500, and to the credit of the first payee's representative. The prisoner was convicted under s. 465 of the Penal Code in respect of the cheque, and under s. 218 in respect of the two reports above referred to. Held, with respect to the charge under s. 465, that the prisoner's immediate and more probable intention—which alone, and not his remoter and less probable intention, should be attributed to him-was not to cause wrongful loss to the second payee by delaying payment of the Rs. 500 due to her, though the act might have caused her loss, but to conceal the previous fraudulent withdrawal of the first payee's Rs. 500; that, under these circumstances, he could not be said to have acted "dishonestly" or "fraudulently" within the meaning of s. 24 or s. 25 of the Penal Code; and that, therefore, his guilt under s. 465 had not been made out, and the conviction under that section must be set aside. Hald also that prisoner's intention in making the false reports was to stave off the discovery of the previous fraud, and save himself or the actual perpetrator of that fraud from legal punishment; and that, having prepared the reports in a manner which he knew to be incorrect, he was rightly convicted under s. 218 of the Penal Code. Held further that, as the prisoner, who was a public servant, made these reports, and assumed to make them in due course and as a part of his duty, and held them out as reports which were made by the proper officer, and, as no question was put in the examination of the witnesses from the office which suggested that it was not his business to make such reports, it must be inferred that he made them, because it was his business to do so, and as a public servant within the meaning of s. 218 of the Penal Code. QUEEN-EMPRESS v. GRIDHARI LAL, I. L. R., 8 All. 653. [Edge, C.J. Aug. 24, 1886.]

219. Whoever, being a public servant, corruptly or maliciously makes Ct. of Ses. or pronounces, in any stage of a judicial proceeding, Warrant. Public servant in judicial proceeding corruptly making report, &c., contrary to law. any report, order, verdict, or decision, which he knows Bailable. to be contrary to law, shall be punished with impri- Not comp. somment of either description for a term which may extend to seven years, or

with fine, or with both.

220. Whoever, being in any office which gives him legal authority to

Commitment for trial or confinement by person having authority who knows he is acting contrary to law.

commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that

authority, knowing that, in so doing, he is acting contrary to law, shall be panished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

PROOF of an unlawful commitment to confinement will not of itself warrant the legal inference of malice. Knowledge that such commitment is contrary to law is a

Ditto.

question of fact, and not of law, and must be proved in order to satisfy the requirements of s. 220 of the Penal Code.—Reg. v. Narayan Babaji, 9 Bom. H. C. R. 346. [Lloyd and Kemball, JJ. Aug. 28, 1872.]

S. 54 of the Criminal Procedure Code (Act X. of 1882) authorizes the arrest by the police, not only of persons against whom a reasonable complaint has been made, or a reasonable suspicion exists, of their having been concerned in a "cognizable offence," but also of persons against whom "credible information" to that effect has been received. Semble.—Where the arrest is legal, there can be no guilty knowledge "superadded to an illegal act," such as it is necessary to establish against the accused to justify a conviction under s. 220 of the Penal Code. It is only where there has been an excess by a police-officer of his legal powers of arrest that it becomes necessary to consider whether be has acted corruptly or maliciously, and with the knowledge that he was acting contrary to law.—Queen Empress v. Amarsang Jetha, I. L. R., to Bom. 506. [Birdwood and Jardine, J]. Dec. 7, 1885.]

Ct. of Ses. Uncog. Warrant. Bailable. Not comp.

221. Whoever, being a public servant, legally bound, as such public servant, legally bound, as such public servant, to apprehend or to keep in confinement any person charged with, or liable to be apprehended for, an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape, from such confinement, shall be punished as follows, that is to say:—

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death; or

Ct. of Ses., Presy. Mag., or Mag. of 11t class.

With imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years; or

Presy. Mag. With imprisonment of either description for a term which may extend to or Mag. of lat two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term of less than ten years.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

An offence falling under the Police Act and also under the Penal Code should be punished under the Code. Where a police-constable allowed a prisoner to escape from the havalat while the former was on duty as sentry, and was sentenced, on conviction by the Magistrate, to forfeit three months' pay under s. 29, Act V. of 1861, the Chief Court held that the conviction must be quashed, and the accused tried under s. 221.—Crown v. Futteh Khan, Panj. Rec., No. 11 of 1874.

A CHAUKIDAR or village-watchman is not legally bound as a public servant to apprehend a person accused of committing murder outside the village of which he is chaukidar, such person not being a proclaimed offender, and not having been found by him in the act of committing such murder; and consequently such chaukidar, if he refuses to apprehend such person on such charge at the instance of a private person, is not punishable under s. 221 of the Penal Code.—Empress v. Kallu, I. L. R., 3 All. 60. [Pearson, J. June 25, 1880.]

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222. Whoever, being a public servant, legally bound as such public ser- Ct. of Ses. vant to apprehend, or to keep in confinement, any Uncog.
person under sentence of a Court of Justice for any Not bailable. Intentional omission to apprehend on part of public servast bound to apprehend per-

son under sentence or lawfully

committed.

offence, "or lawfully committed to custody," inten- Not comp. tionally omits to apprehend such person, or intentionally suffers such person to escape, or intention-

ally aids such person in escaping or attempting to escape, from such confinement, shall-be punished as follows, that is to say:-

With transportation for life or with imprisonment of either description for a term which may extend to fourteen years, with Punishment. or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or-

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards; or

Ditto.

With imprisonment of either description for a term which may extend to Ct. of Ses., three years, or with fine, or with both, if the person in confinement, or who Presy. Mag. or Mag. of Mag. of ist ought to have been apprehended, is subject, by a sentence of a Court of class. Justice, to imprisonment for a term not extending to ten years, "or if the Unoverperson was lawfully committed to custody." †

Bailable.

In this section the word "offence" denotes a thing punishable under this Code, or Not comp. under any special or local law as defined in this Code.—S. 49, Penal Code.

WHILE a case was being investigated by A, a police-officer, under the provisions of ch. 14 of the Criminal Procedure Code, 1882, T presented a petition to the Magistrate having jurisdiction to try the case, in which he accused W of being concerned in the commission of the offence, and prayed that he might be arrested and sent to the police-officer investigating the case. W was accordingly arrested and brought before the Magistrate, who, having examined T on oath, and taken W's statement, made an order on the petition to the following effect: "As no police-report has been made in this matter, and the petitioner only has presented this petition, ordered that these papers of W be sent to the District Superintendent of Police, and if a report of this matter be made, the case may be sent up according to rule with the papers." In accordance with this order, W was taken to the District Superintendent of Police, and was sent by that officer to A. Held that the Magistrate's order might be taken to have been passed under s. 167 of the Code, and therefore W was lawfully committed to the custody of the police, and A was bound to detain him in such custody until released therefrom by due course of law; and that, consequently, A, having negligently suffered W to escape, had been properly convicted under s. 223 of the Penal Code.—EMPRESS v. ASHRAF ALI, I. L. R., O All. 129 [Straight, J. Dec. 13, 1883.]

228. Whoever, being a public servant, legally bound as such public Presy. Mag. apperfrom confinement or servant to keep in confinement any person charged or Mag. of 1st Escape from confinement or with, or convicted of, any offence, "or lawfully com-mitted to custody,"* negligently suffers such person Summons. tustody negligently suffered by a public servant. b escape from confinement, shall be punished with simple imprisonment for Bailable.
Not comp. term which may extend to two years, or with fine, or with both.

† The words quoted have been added by Act XXVII. of 1870, s. 8.

[P. C. 31.]

The words quoted have been inserted by Act XXVII. of 1870, s. 8.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

Convict-warpers are "public servants" within the meaning of st 223 of the Penal Code.—Queen v. Kalla Chand Moitree, 7 W. R. 63; 3 Wym. 35. [Seton-Karr and Macpherson, JJ. May 6, 1867.]

S. 223 of the Penal Code applies only to cases where the person who is allowed to escape is in custody for an offence, or has been committed to custody, and not to cases where such person has merely been arrested under civil process.—Queen Empress v. Tafaullah, I. L. R., 12 Cal. 190. [Wilson and Ghose, J]. Aug. 24, 1885.]

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

Resistance or obstruction to the lawful apprehension of himself for any offence by a person to his lawful apprehension. With which he is charged, or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended, or detained in custody, was liable for the offence with which he was charged, or of which he was convicted.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

ESCAPING from lawful custody is not obstructing a public servant in the discharge of his public functions within the meaning of s. 180 of the Penal Code.—REG. v. POSHUBIN DHAMBAJI PATIL, 2 Bom. H. C. R. 128. [Couch, C.]., and Newton and Warden, J. Jan. 25, 1865.]

ESCAPES by parties detained for offences not punishable under the Penal Code are punishable under the Penal Code.—Pro., Dec. 22, 1866, 3 Mad. H. C. R., Ap., 11. [Bittleston, Offg. C.J., and Holloway, Collett, Ellis, and Innes, JJ.]

THE punishment for escape from lawful custody (s. 224), in a case in which that is one of the offences of which the prisoner is convicted, must be "in addition" to any punishment awarded for the substantive offence.—Queen v. Dhoonda Bhooya, 8 W. R. 85; 5 Wym. 7. [Kemp and Glover, JJ. Dec. 2, 1867.]

To constitute the offence of escaping from transportation under s. 226 of the Penal Code, it is essential that the convict should have been actually sent to a penal settlement, and have returned before his term of transportation had expired or been remitted. Where a prisoner had escaped from custody whilst on his way to undergo sentence of transportation, held that he had committed an offence punishable under s. 224, and not under s. 226 of the Penal Code—Reg. v. Ramasamy, 4 Mad. H. C. R. 152. [Scoland, C. J., and Collett, J. Dec. 2, 1868.]

To escape from custody under civil process is not a criminal offence within the meaning of s. 8 of the Presidency Towns' Police Amendment Act of 1860. ** Whether such an escape, without force, is a misdemeanour at Common Law ?—In re David Turnbull Stuart; Reg. v. John Connon, 6 Bom. H. C. R. 15. [Westropp and Sargent, JJ. April 12, 1869.]

PRISONER, whilst under trial before the Sessions Court upon a charge framed under s. 436 of the Penal Code (mischief by fire, &c., with intent to destroy a house), was charged under s. 224 with escaping from lawful custody. The Magistrate, being too late to make the latter offence the subject of another charge in the same case, made a separate commitment of the prisoner, after he had been convicted of the former offence, for the latter offence, which was one cognizable by the Magistrate. The commitment was cancelled, and the Magistrate directed to deal with the case himself.—In re Anunto Koyburt, 17 W. R. 14. [Kemp and Jackson, JJ. Feb. 10, 1872.]

A PERSON who is detained in custody for the purpose of giving security for good behaviour, and escapes from the custody, has not committed an offence under s. 224, as he

was not lawfully detained in custody for an offence.—Pro., Oct. 28, 1874, 7 Mad. H. C. R., Ap., 41. He is liable to be punished under s. 225A.

WHERE a party was sentenced to ten months' imprisonment for escaping from a confinement, which he was undergoing without warrant of law, and without having committed an offence, the High Court, in the exercise of its powers of interference, set aside the sentence.—Queen v. Rughoobur Singh, 25 W. R. I. [Jackson and McDonell, J]. Dec. 2, 1875.]

Escape from the custody of a village-watchman by a person wanted by the police on a charge of theft, and arrested on suspicion by the village-watchman, is no offence under s, 224.—Ree. v. Bojjigan (I. L. R., 5 Mad. 22), following Reg. v. M. Sinnadu Padiyachi (Weit, p. 68), in which the facts were as follow: "A prisoner, caught stealing limes, was brought by the owner to the village-magistrate, who put him into the stocks, and put the talyari and vettiyan in charge over him. They went to sleep, and the prisoner released himself. Held that the confinement in the stocks of the accused before conviction was not lawful custody (Mad. Reg. XI. of 1816), and that the village-watchman was not a police-officer within the meaning of Act XXIV. of 1859, because he had not been enrolled or invested with power under s 11 of that Act. Conviction for escaping from lawful custody. Sep. 23, 1878.

An escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour is not punishable under either s. 224 or s. 225 of the Penal Code.—EMPRESS v. SHASTI CHURN NAPIT, I. L. R., 8 Cal. 331; 10 C. L. R.

290. [Mitter and Maclean,]]. Feb. 22, 1882.]

An order was issued to a police-officer, directing him to arrest K under s. 55 of the Criminal Procedure Code, as a person of bad livelihood. K, with the assistance of three others, resisted apprehension, and escaped. Held that K was not charged with an "offence" within the meaning of that term as defined in s. 40 of the Penal Code, and that, consequently, no offence made punishable by s. 224 or s. 225 of the Penal Code had been committed in connection with his evasion of arrest. Empress v. Shasti, Churn Napit (I. L. 18, 8 Cal. 331) followed.—Queen-Empress v. Kandhaia, I. L. R., 7 All. 67. Mahmood and Duthoit, JJ. Aug. 7, 1884.]

THE accused was arrested in the act of stealing, and was handed over to the Village-Magistrate, shooforwarded him in custody of the village-servants to a police-station. The accused escaped on the way. He was convicted under s. 224 of the Penal Code. On appeal the conviction was reversed, on the ground that the custody was not legal. Held that the conviction was right. S. 59 of the Code of Criminal Procedure, which requires a private person who arrests a thief in the act to take the thief to the nearest police station, is sufficiently complied by sending the offender in custody of a servant.—Queen-Empress v. Potadu, I. L. R., 11 Mad. 480. [Muttusami Ayyar and Parker, JJ. Sep. 4, 1888.]

An offence was committed in 1866. In 1893, a person of the same name as the offender was arrested, tried, and acquitted. Whilst under arrest, the accused escaped from custody. Held that he was not liable to conviction under s. 224 of the Penal Code. An escape from custody, when such detention is not for an offence, is not punishable under that section.—Ganga Charan Singh v. Queen-Empress, I. L. R., 21 Cal. 337. [Prinsep and Ameer Ali, JJ. Dec. 21, 1893.]

On a charge under the Penal Code, s. 226, it appeared that the accused had been apprehended on a hue and cry being raised as he was running away after committing robbery, and that he was handed over to the village-magistrate, and was by him placed in the tharge of taliyaries for detention till the next morning, when he was to be taken to the police-station, and that he escaped from the custody of the taliyaries. Held, distinguishing Queen v. Bojjigan (I. L. R., 5 Mad. 22), that the accused was rightly convicted of the offence charged.—Queen-Empress v. Fakira, I. L. R., 17 Mad. 103. [Muttusami Ayyar and Best, 1]. Oct. 25, 1893.

225. Whoever intentionally offers any resistance or illegal obstruction Resistance or obstruction to the lawful apprehension of any other person for or Mag. of 1st lawful apprehension of an an offence, or rescues or attempts to rescue any or and class.

other person from any custody in which that person Cognizable.

Warrant, Bailable. either description for a term which may extend to Not comp. two years, or with fine, or with both;

Punishment.



Ct. of Ses, Presy, Mag., or Mag. of ist class. Cognizable. Warrant. Not bailable. Not comp. Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

Ditto.

Ditto.

Or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with, or liable to be apprehended for, an offence puntshable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

WHERE substantially but one offence has been committed, and the acts, which are the basis of one charge, are the same which form the basis of another charge on which the prisoner has also been convicted, cumulative sentences on each charge should not be passed. Where prisoners were convicted, under s. 224 for escape, under s. 225 for rescuing from lawful custody, and under s. 353 for using criminal force in so doing, and sentenced to separate punishments under each section, it was held that the prisoners had only done one act, and were guilty of only one offence, and should only have been found guilty under ss. 224 and 225 of "escape" and "rescuing" respectively, and sentenced accordingly—QUEEN T. KALISANKAR SANDYAL, 3 B. L. R., A. Cr., 14; 12 W. R. 2. [Macpherson and Jackson, J]. June 11, 1869.]

Where a police-officer duly appointed under Act V. of 1861 was engaged in the discharge of his duty as such police-officer at a time when an unlawful assembly took place, it was held that he was competent to apprehend any of the members of such unlawful assembly; and a person who rescued the party apprehended was convicted of rescuing from lawful custody within the meaning of s. 225 of the Penal Code.—Queen v. Assam Shureeff, 13 W. R. 75. [Phear and Mitter, JJ. May 17, 1870.]

BEFORE a conviction can be had under s. 225, Penal Code, it must be proved that the person whom the accused are charged with having rescued was in lawful custody at the time.—QUEEN v. DEGUMBER AHEER, 21 W. R. 22. [Glover and Markby, JJ. Dec 18, 1873.]

Where a person, apprehended on a charge of a cognizable offence, escapes from lawful custody, his liability to punishment is not affected by the circumstance that a competent Court determines his offence to be other than that with which he has been charged. But, if charged with a non-cognizable offence, the police-officer who apprehends him without warrant does not have him in lawful custody, and his escape is not punishable under the Penal Code, s. 224.—Queen v. Ram Saran Tewary, 24 W. R. 45. [Jackson and McDonell, JJ. Aug. 19, 1875.]

An escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour is not punishable under either s. 224 or 225 of the Penal Code.—Empress v. Shasti Churn Napit, I. L. R., 8 Cal. 331; 10 C. L. R. 290 [Mitter and Maclean, JJ. Feb. 22, 1882.] But see s. 225B, which is a new section.

An order was issued to a police-officer, directing him to arrest K under s. 55 of the Criminal Procedure Code, as a person of bad livelihood. K, with the assistance of three

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CHAP. XI.] OFFENCES AGAINST PUBLIC JUSTICE. [SECS. 225A, 225B.

others, resisted apprehension, and escaped. Held that K was not charged with an "offeace" within the meaning of that term as defined in s. 40 of the Penal Code, and that consequently no offence made punishable by s. 224 or s. 225 of the Penal Code had been committed in connection with his evasion of arrest. Empress v. Shasti Churn Napit (I. L. R., 8 Cal. 331) fellowed.—Queen-Empress v. Kandhaia, I. L. R., 7 All. 67. [Mahmood and Duthoit, J]. Aug. 7, 1884.] But see new section (225B).

To support a conviction under s. 225 of the Penal Code, it is not necessary that the custody from which the offender is rescued should be that of a policeman: it is enough that the custody is one which is authorized by law. Held, therefore, that rescue from the custody of a private person who had a rested a title in the act of stealing was an offence. A Magistrate tried A for theft, and B and C for rescuing A from lawful custody, and convicted A, B, and C in one trial A appealed, and B and C appealed separately. No objection was taken in the petitions of appeal to the procedure of the Magistrate. Held, on registon, that the convictions might stand.—QUEEN-EMPRESS v. KUTGI, I. L. R., 11 Mad. 441. [Muttusami Ayyar and Parker, J]. July 18, 1888.]

Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise provided for.

225A.* Whoever, being a public servant, legally bound as such public As to cl. a, servant to apprehend, or to keep in confinement, Ct. of Ses., any person in any case not provided for in section Presy. Mag or Mag. of 221, section 222, or section 223, or in any other law 1st class. for the time being in force, omits to apprehend Uncog. that person, or suffers him to escape from confinement, shall be punished—

(a) if he does so intentionally, with imprisonment of either description Not comp. for a term which may extend to three years, or with fine, or with both; and

(b) if he does so negligently, with simple imprisonment for a term which Presy. Mag. extend to two years, or with fine, or with both. , may extend to two years, or with fine, or with both.

Resistance or abstruction to lawful apprehension, or escape, or rescue, in cases not otherwise provided for.

225B.* (1) Whoever, in any case not provided for in section 224 or Summons. section 225, or in any other law for the time being Bailable. in force, intentionally offers any resistance or illegal Not comp. obstruction to the lawful apprehension of himself As to 8. 225B, or of any other person, or escapes or attempts to Presv. Mag.

escape from any custody in which he is lawfully detained, or rescues or at- or Mag. of 1st tempts to rescue any other person from any custody in which that person is Cognizable. lawfully detained, shall be punished with imprisonment of either description Warrant. for a term which may extend to six months, or with fine or with both.

(2) Section 651 of the Code of Civil Procedure is hereby repealed.

A REVENUE COURT is a "Court of Civil Judicature" within the meaning of s. 651 of the Code of Civil Procedure. A person, therefore, who escapes from custody under the process of a Revenue Court, is punishable under that section. S. 642 of the Civil Procedure Code only protects an accused person while he is attending a Criminal Court from arrest "under that Code." Held therefore, where a person, who had been convicted by a Magistrate, and had been fined, was arrested in execution of the process of a Revenue Court while waiting in Court until the money to pay such fine was brought, that such person was not protected from such arrest by the provisions of that section, and that, having escaped from custody under such arrest, such person had properly been convicted under s. 651 for escaping from "lawful custody."—EMPRESS v. HARAKH NATH SINGH, I. L. R., 4 All. 27. [Straight and Duthoit, J]. July 13, 1881.]

making the apprehension having the warrant of the Court executing the decree in his possession at the time of making the apprehension is illegal; and therefore, in such a case, the judgment-debtor does not render himself liable to punishment under s. 651 of

THE apprehension of a judgment-debtor in execution of a decree without the officer

Bailable.

As to cl. b,

or and class, Uncog.

Bailable.

Not comp.

^{*} Ss. 225A and 225B have been substituted by Act X. of 1886, s. 24, for s. 225A as inserted in the Penal Code by Act XXVII. of 1870.

the Civil Procedure Code, if he escapes from the custody of the officer making the apprehension. Quære.—Whether a person convicted under s. 651 of the Civil Procedure Code of escaping from lawful custody, who is sentenced to one month's imprisonment only, can, under s. 588 (29) of that Code, appeal?—Empress v. Aear Nath, I. L. R., 5 All. 318. [Tyrrell, J. Feb. 1, 1883.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp. Unlawful return from transportation.

Unlawful return from transportation.

Unlawful return from transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

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To constitute the offence of escaping from transportation under s. 226 of the Penal Code, it is essential that the convict should have been actually sent to a penal settlement and have returned before his term of transportation had expired or been refutted. Where a prisoner had escaped from custody whilst on his way to undergo sentence of transportation, it was held that he had committed an offence punishable under s. 224, and not under s. 226 of the Penal Code.—Reg. v. Ramasamy, 4 Mad. H. C. R. 152 [Scotland, C.J., and Collett, J. Dec. 2, 1868.]

Ct. by which original offence was triable. Uncog. Summons. Not bailable. Not comp.

227. Whoever, having accepted any conditional remission of punishViolation of condition of remission of punishment.

ment, knowingly violates any condition on which
such remission was granted, shall be punished with
the punishment to which he was originally sentenced if he has already suffered
no part of that punishment, and if he has suffered any part of that punishment,
then with so much of that punishment as he has not already suffered.

A PERSON, convicted by the Recorder's Court of Prince of Wales's Island, Singapore, and Malacca, of the crime of burglary, and sentenced to transportation for ten years, at a place to be appointed by the Governor-General of India in Council, was released from the Ratnagiri jail on the ticket-of-leave after having been in confinement for more than eight years. At Karedar he committed theft in a dwelling-house before his sentence had expired. Held that the F. P. Magistrate at Karedar had jurisdiction to try the convict for an offence of violation of the condition of remission of punishment under s. 227, Penal Code.—Reg. v. Ahone Akong, 9 Bom. H. C. R. 356. [Lloyd and Kemball, J]. Sep. 5, 1872.]

Ct. in which offence committed, subject to provisions of ch. 35. Uncog. Summons. Bailable. Not comp. Lanction.

228. Whoever intentionally offers any insult, or causes any interruption, Intentional insult or inter-

ruption to public servant sitting in any stage of a judicial proceeding. to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may

extend to one thousand rupees, or with both.

A PARTY who bids for an estate at a sale in execution, with the knowledge that he is not in a position to deposit the earnest-money, obstructs the business of the Court, and is guilty of contempt of Court, punishable under s. 228.—In the Matter of Mohese Chunder Mookerjee, W. R., Sp., Mis., 3. [Kemp and Campbell, J]. Jan. 11, 1864.]

When a person is in custody for contempt of Court, any application for release should be made to the committing Judge. It is advisable, but not necessary, to limit the period of commitment to a fixed time,—In the Matter of Sittaram Atmaram, 1 Ind. Jur., N. S., 23. [Peacock, C.J., and Couch, J. Jan. 1866.]

REFUSING or neglecting to return direct answers to questions does not constitute the offence, under s. 228 of the Penal Code, of intentionally offering insult or causing interruption to a public servant sitting in a judicial proceeding.—Reg. v. Pandt sin Vithoji, 4 Bom. H. C. R. 7. [Couch, C.J., and Newton, J. July 24, 1867.]

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OFFENCES AGAINST PUBLIC JUSTICE.

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PREVARICATION while giving evidence does not constitute the offence, under s. 228 of the Penal Code, of intentionally causing interruption to a public servant sitting in a judicial proceeding. Reg. v. Auba bin Bhivray, 4 Bom. H. C. R. 6. [Couch, C.]., and Newton, J. July 24, 1867.]

PRESISTING in putting irrelevant and vexatious questions to a witness after warning & might amount to a contempt.—AZEEMOOLA v. CROWN, Panj. Rec., No. 44 of 1867.

An appeal lies against an order of the Sessions Court imposing a fine upon a witness under a 228 of the Penal Code for intentional insult to the Sessions Judge sitting is a stage of a judicial proceeding. Where the High Court were satisfied that the shoes did not intend to insult the Judge, the order was set aside.—Reg. v. R. Chappu Exnox, 4 Mad. H. C. R. 146. [Scotland, C.J., and Ellis, J. Nov. 6, 1868.]

In a conviction under s. 228 of the Penal Code, it ought to be clearly stated that the Judge was sitting in a stage of a judicial proceeding, the nature of which should also be stated.—IN THE MATTER OF PROKASH CHUNDER DOSS, 12 W. R. 64. [Norman and Kemp, IJ. Oct. 1, 1869.]

HELD, overruling Baijoo Baul v. Gugun Misser (8 W. R. 61), that a Magistrate cannot take cognizance of an offence under s. 174, Penal Code, committed against his own Court, but is bound, under s. 171 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 476 of the new Code of Criminal Procedure (Act X. of 1882), to send the case for trial before another Magistrate. The only cases under the Criminal Procedure Code in which a Sessions Judge or Magistrate can try a case in which he is himself interested pointed out.—QUERN v. CHUNDER SHEKUR ROY, 13 W. R. 66; 5 B. L. R. 100. [Jackson and Glover, J] April 23, 1870.]

No conviction can be had under s. 228 of the Penal Code, simply because witnesses in a case give inconsistent evidence, and give their evidence reluctantly, and take up the time of the Court.—Schen v. Chota Hurry Pramanick Tantee, 15 W. R. 5. [Norman, Offg. C.J., and Loch, J. Jan. 21, 1871.]

BEFORE a conviction can be had, under s. 228 of the Penal Code, of offering an insult to a public servant, it must be proved that there was an intention to insult.—QUEEN v. HURRI KISHEN DOSS, 15 W. R. 62. [Kemp and Glover, J]. April 29, 1871.]

PREVARICATION by a witness may, though it does not necessarily, amount to contempt of Court within the meaning of s 228 of the Penal Code, and s. 435 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 480 of the new Code of Criminal Procedure (Act X. of 1882).—REG. v. JAIMAL SHRAVAN, 10 Bom. H. C. R. 69. [Melvill and Kemball, J]. Mar. 27, 1873.]

A SUB-REGISTRAR is a public officer; his proceedings are judicial proceedings within the meaning of s. 228 of the Penal Code; and his Coart is a Court within the meaning of that word in the Evidence Act. In cases under s. 228 of the Penal Code, the Court in which the offence is committed is to try the offence, but the procedure is to be restricted by the provisions of ch. 32 of the Code (Act X. of 1872), corresponding with ch. 35 of the new Code (Act X. of 1882). Where, in a case under s. 228, the sub-registrar, before whom the offence was committed, did not proceed under s. 435 or s. 436 of the Code of 1872 (corresponding with ss 480 to 482 of the new Code, Act X. of 1882), it was held that a Magistrate had no jurisdiction.—In the Matter of Sardharee Lal, 22 W. R. 10; 13 B. L. R., Ap., 40. [Kemp and Birch, J]. April 28, 1874.

S. 473 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 487 of the new Code of Criminal Procedure (Act X. of 1882), which, except as therein provided, forbids a Court to try any person for an offence committed in contempt of its own authority, is not limited to offences falling under ch. 10 of the Penal Code, but extends to all contempts of Court. Reg. v. Kultaran Singh (I. L. R., 1 All. 129) dissented from; 7 Mad. H. C. R., Ap., 17, approved Reg. v. Navranbeg Dulabeg (10 Bom. H. C. R., 73) followed.—Reg. v. Parsapa Mahadevapa, I. L. R., 1 Bom. 339. [Melvill and Nanabhai Haridas, J]. Aug. 17, 1876.]

A BARRISTER offended by the use of a strong expression on the part of a Judge while sitting in Court sends an officer to the Judge's private residence upon a pacific errand to ask forens explanation. Held, by nine Judges out of eleven, that the party sending the message and the party conveying it are guilty of contempt of Court.—In the Matter of Pippard (C.) and Francis (E. G.), Hyde's Rep. 79.

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The procedure laid down in s. 480 of the Criminal Procedure Code should be strictly followed. The provisions of the section should be applied then and there, at any rate before its rising, by the Court in whose view or presence a contempt has been committed, which it considers should be dealt with under s. 480. Where a Magistrate in whose presence contempt was committed took cognizance of the offence immediately, but, in order to give the accused an opportunity of showing cause, postponed his final order for some days, held that such action, though it might be irregular, was not illegal, and, as the accused had not been in any way prejudiced, was covered by s. 537 of the Criminal Procedure Code. Held also that, under the circumstances, it was doubtful whether there was any necessity for the Magistrate to postpone the final order until the accused had had an opportunity of showing cause against it, and that he should have directed the detention of the accused, and dealt with the matter at once or before his rising.—Queen-Empress v. Paiambar Bakhsh, I. L. R., 11 All. 361. [Straight, J. April 1, 1889]

THE accused intentionally insulted a Village Munsif in the discharge of his magisterial duties. The Village Munsif did not prefer a complaint or sanction a prosecution but a Second-class Magistrate charged the accused under the Penal Code, s. 228, on a police-report, and convicted him. Held (1) that ss. 480-482, Criminal Procedure Code on the apply to Village Munsifs; (2) that the Second-class Magistrate was competent to try the complaint, and the conviction was right.—Queen-Empress v. Venkatasami, l. L. R., 15 Mad. 131. [Collins, C.J., and Parker, J. Nov. 19, 1891.]

Presy. Mag. or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

229. Whoever, by personation or otherwise, shall intentionally cause or Personation of a juror or assessor. knowingly suffer himself to be returned, empannelled, or sworn, or knowing himself to have been so returned, empannelled, or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

REPORT OF THE INDIAN LAW COMMISSIONERS ON OFFENCES RELATING TO COIN.

Most of the provisions in this chapter appear sufficiently intelligible without any explanation.

We have proposed that the Government of India should follow the general practice of Governments in punishing more severely the counterfeiting of its own coin than the counterfeiting of foreign coin. It appears to us peculiarly advisable, under the present circumstances of India, to make this distinction. It is much to be wished that the Company's currency may supersede the numerous coinages which are issued from a crowd of mints in the dominions of the petty Princes of India. It has appeared to us that this object may be, in some degree, promoted by the law as we have framed it. That coinage, the purity of which is guarded by the most rigorous penalties, is likely to be the most pure; and that coinage which is likely to be the most pure, will be the most readily taken in the course of business.

It is not very probable that any person in this country will employ himself in making

counterfeit sovereigns or shillings; but, should so improbable an event occur, we think that the King's coin should have the same protection which is given to the coin of the Lo: cal Government. It may perhaps be thought that, in proposing laws for the protection of the King's coin, we have departed from the principle which we laid down in our note on the law of offences against the State, and that we should have acted more consistently in leaving the British currency to the care of the British Legislature. It appears to us, however, that the offence of coining, though, in an arbitrary classification, it may be called by the technical name of treason, is in substance an offence against property and trade, and that it is an offence of very nearly the same kind with the forging of a bank-note, and that it would be an offence of exactly the same kind if the bank-note, like the notes of the bank of England formerly, were, in all cases, legal tender, or if the coin like the Company's gold-mohur at present, were not legal tender. We do not, therefore, conceive

tentis. l'in mame, qui puère in a lich on on a piente Briefmanis en or Panel Digitized by Google **EPORT** OF THE INDIAN LAW COMMISSIONERS ON OFFENCES RELATING TO COIN.—contd.

t, in proposing a law for punishing the materiesting of the King's coin, we are posing a law which can reasonably be d to affect any of the royal prerogatives. hedistinction which we propose to make breen two different classes of utterers is

riced in the French Code; and it is so obusly agreeable to reason and justice that paresurprised that, having been marked in t Code, it should not have been adopted Mr. Livingstone. We are glad to perwe that the Code of Bombay makes this tinction. An atterer by profession, an utterer who

the agent employed by the coiner to bring interfeit coin into circulation, is guilty of ery high offence. Such an utterer stands the coiner in a relation not very different m that in which a habitual receiver of elen goods stands to a thief. He makes ining a far less perilous, and a far more lutive, pursuit than it would otherwise be. passes his life in the systematic violation the law, and in the systematic practice of made in one of its most pernicious forms. is one of the most mischievous, and is ely to be one of the most deprayed, of crials. But a casual utterer, an utterer who not an agent for bringing counterfeit coin to circulation, but who, having heedlessly ceived a bad supee in the course of his siness, takes advantage of the heedlessess of the next person with whom he deals pay that bad rupee away, is an offender of very different class. He is undoubtedly wilty of a dishonest act, but of one of the lost venial of dishonest acts. It is an act hich proceeds, not from greediness for unful gain, but from a wish to avoid, by un-Fful means it is true, what to a poor man w be a severe loss. It is an act which has

no tendency to facilitate or encourage the operations of the coiner. It is an occasional act, an act which does not imply that the person who commits it is a person of lawless We think, therefore, that the offence of a casual utterer is perhaps the least heinous of all the offences into which fraud We considered whether it would be advi-

sable to make it an offence in a person to have in his possession at one time a certain number of counterfeit coins without being able to explain satisfactorily flow he came by them. It did not, after much discussion, appear to us advisable to recommend this or any similar provision. We entertain strong objections to the practice of making circumstances which are, in truth only evidence of an offence part of the definition of an offence: nor do we see any reason for departing in this case from our general rule.

Whether a person who is possessed of bad money knows the money to be bad, and whether, knowing it to be bad, he intends to put it in circulation, are questions to be decided by the tribunals according to the circumstances of the case, circumstances of which the mere number of the pieces is only one, and may be one of the least important, A few bad rupees which should evidently be fresh from the stamp would be stronger evidence than a greater number of bad rupees which appeared to have been in circulation for years. A few bad rupees, all obviously coined with the same die, would be stronger evidence than a greater number obviously coined with different dies. A few bad rupees placed by themselves, and unmixed with good ones, would be far stronger evidence than a much larger number which might be detected in a larger mass of treasure.

280. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Coin " defined. Power in order to be so used

Com is metal Soin stamped and issued by the authority of the Queen, or by the authority of the Covernment of India or of the Covernment of India ity of the Government of India, or of the Govern-Queen's coin.

ment of any Presidency, or of any Government in e Queen's dominions, is the Queen's coin. in order to ke used as more and Illustrations. issued shall continue to be and showeverth substitutes

(a) Cowries are not coin.

hobortholanding that it may have ceased to be us.

(b) Lumps of unstamped copper, though used as money, are not coin.

(c) Medals are not coin, inasmuch as they are not intended to be used as money.

The coin denominated as the Company's rupee is the Queen's coin.

* This paragraph has been substituted by Act XIX. of 1872 for the one originally

Rulings.

JT is not necessary, in order to satisfy the ordinary definition of money, that a conshould be a legal tender receivable at a value in rupees fixed by law. Goldmohurs, which, although they do not pass at an absolutely fixed value, yet have a current value, not ascertainable merely by weighing them as lumps of gold, but attaching to them as coin, are coins "for the time being used as money" within the meaning of Act XIX. of 1872.—Queen v. Kunj Beharee, 5 N.-W. P. 187. [Pearson and Jardine, JJ. June 7, 1873.]

S. 230 is an amended section. It has been amended by Act XIX. of 1872. The following are Mr. Hobhouse's object and reasons for the amendment: "The primary object of this Bill is to check the practice of counterfeiting the copper coin of Native States. These counterfeits are freely circulated in parts of British India, and the result is stated to be injurious to our currency. The Penal Code prohibits the counterfeiting of coin. But 'coin' is defined as 'metal stamped and issued by the authority of some Government, and 'Government,' by s. 17, denotes 'the person or persons athorized by law to administer executive government in any part of British India.' It has thus happened (accidentally, no doubt) that the coin of Native States is not coin within the meaning of the Act. This defect it is desired to amend. The opportunity has been taken to make another amendment S. 230 defines coin as metal 'used' as money. It has been suggested that the definition may possibly be held to include old coin, such as the Graco-Bactrian stater, formerly used as money, but now regarded only as a curiosity. The Bill therefore proposes to introduce before 'used' the words 'for the time being.'"

281. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A person commits this offence, who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

THOUGH there may be an absence of apparent resemblance, which may possibly arise from the process being imperfectly carried out, yet there would still be an offence under s. 231. And, even if the metal in which the counterfeit was made was completely different from that of the coin repre ented, it would still be a question of fact whether this difference did not arise merely from the manufacture having been interrupted in an early stage.—Mad. H. C. Rul., Nov. 17, 1863.

Where a medal was fraudulently represented to an ignorant person as being money it was held that the representation did not render the medal counterfeit coin.—Mad. H. C. Rul, 1864.

BUSH MERCHANTS in various parts of the country had been in the habit for many years of sending copper to the Nawab of Loharoo, who turned the metal in mints established for the purpose into small round pieces, upon which a certain stamp was impressed, the stamp not purporting to resemble the mark on any legal coin. These pieces of copper were then sold in the Bazars in British India by weight, and used as money. It was generally believed that the Nawab had authority to establish the mints, and issue this copper as coin. Held that the pieces of copper were not counterfeit coin.—Premsoonh, Dass & Crown, Panj. Rec., No. 38 of 1870. But see the amended definition of "coin."

THE test of whether a coin is money or not is the possibility of taking it into the market, and obtaining goods of any kind in exchange for it. For this its value must be ascertained and notorious. Held, therefore, that to counterfeit a coin of the Emperor Akbar's time was not an offence under ss. 230 and 231 of the Penal Code.—Reg. v. BI-PUYADAY AND RAMA TULSIRAM, 11 Bom. H. C. R. 172. [West and Nanabhai Haridas, JJ. Sep. 10, 1874.]

282. Whoever counterfeits, or knowingly performs any part of the Counterfeiting the Queen's process of counterfeiting, the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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Cognizable.

Not comp.

Warrant. Not baifable.

Ditto.

To constitute the offence described in \$ 232, there must be an intention that the coins made will be used as Queen's coin, or a knowledge that they are likely to be used such. Such knowledge or intention will be inferred from the mere fact of counterfeiting, except under dircumstances which conclusively negative it; but a distinction must be drawn between a deception practised for show merely, and one practised for wrong-ful loss or gain, and the former is not an offence under the Penal Code.—Shumsoodeen v. Crown, Panj. Rec., No. 26 of 1868.

233. Whoever makes or mends, or performs any part of the process Ct. of Ses., Making or selling instru- of making or mending, or buys, sells, or disposes or Mag. of of, any die or instrument, for the purpose of being 1st class. ment for counterfeiting coin. used, or knowing or having reason to believe that it is intended to be used, Cognizable. for the purpose of counterfeiting coin, shall be punished with imprisonment Not bailable. of either description for a term which may extend to three years, and shall Not comp. also be liable to fine.

Making or selling instrufor counterfeiting Queen's coin.

284. Whoever makes or mends, or performs any part of the process Ct. of Ses. of making or mending, or buys, sells, or disposes Cognizable. of, any die or instrument, for the purpose of being Not bailable. used, or knowing or having reason to believe that Not comp. it is intended to be used, for the the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either descript on for a term which

Possession of instrument or material for the purpose of using the same for counterfeiting coin.

285. Whoever is in possession of any instrument or material for the Ct. of Ses, Presy. Mag., purpose of using the same for counterfeiting coin or Mag. of or knowing or having reason to believe that the 1st class. same is intended to be used for that purpose, shall Cognizable. be punished with imprisonment of either description Not bailable. for a term which may extend to three years, and shall also be liable to fine;

and, if the coin to be counterfeited is the Queen's coin, shall be punished Ct. of Ses. with imprisonment of either description for a term which may extend to ten Warrant. years, and shall also be liable to fine.

may extend to seven years, and shall also be liable to fine.

Not bailable. Not comp.

It is not necessary, to satisfy the ordinary definition of money, that a coin should be a legal tender receivable at a value in rupees fixed by law. Goldmohurs which, although they do not pass at an absolutely fixed value, yet have a current value, not ascertainable merely by weighing them as lumps of gold, but attaching to them as coin, are toins "for the time being used as money" within the meaning of Act XIX. of 1872.—Queen v. Kunj Beharee, 5 N.-W. P. 187. [Pearson and Jardine, JJ. June 7, 1873.]

Ditto.

• 236. Whoever, being within British India, abets the counterfeiting of Abetting in India the coun- coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of terfelting out of India of coin, such coin within British India.

287. Whoever imports into British India, or exports therefrom, any Ct. of Ses., Presy, Mag., counterfeit coin, knowing or having reason to be- or Mag. of 1st Import and export of counlieve that the same is counterfeit, shall be punished class. terieit coin. with imprisonment of either description for a term which may extend to three Warrant. years, and shall also be liable to fine.

Not bailable. Not comp.

MERCHANTS in various parts of the country had been in the habit for many years of sending copper to the Nawab of Loharoo, who turned the metal, in mints established for the purpose, into small round pieces, upon which a certain stamp was impressed, the . stamp, not purporting to resemble the mark on any legal coin. These pieces of copper were then sold in the bazars in British India by weight, and used as money. It was generally believed that the Nawab had authority to establish the mints, and issue this

CHAP. XII.

Ct. of Ses. Cognizable. Warrant. Not bailable. · Not comp.

copper as coin. Held that the pieces of copper were not counterfeit coin.—Ркемевокн DASS v. CROWN, Panj. Rec., No. 38 of 1870. But see the amended definition of "coin." 288. Whoever imports into British India, or exports therefrom, any

counterfeit coin which he knows, or has reason to Import or export of counterfeits of the Queen's coin. believe, to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses, Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

239. Whoever, having any counterfeit coin, which, at the time when he became possessed of it, he knew to be counter-Delivery to another of coin, possessed with the knowledge that it is counterfeit. feit, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

S. 239 of the Penal Code is directed against a person other than the coiner, who procures or obtains or receives counterfeit coin, and not to the offence committed by the coiner.—QUEEN v. SHEOBUX alias SHEOPERSHAD, 3 N.-W. P. 150. [Turner,]. June 23, 1871.]

Ditto.

240. Whoever, having any counterfeit coin which is a counterfeit of Delivery of Queen's coin, possessed with the knowledge the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit That it is counterfeit. of the Queen's coin, fraudulently, or with intent, that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

WHERE the charge is one of counterfeiting Queen's coin, direct ploof of fabrica-Code with reference to the uttering of false coin. All that is required is a guilty knowledge of the spuriousness of the coin at the time of receiving the spuriousness of the coin at the time of receiving the spuriousness of the coin at the time of receiving the spuriousness of the coin at the time of receiving the spuriousness of the coin at the time of receiving the spuriousness of the coin at the time of receiving the spuriousness of the coin at the time of receiving the spuriousness of the coin at the time of receiving the coin at the coin tion is not necessary to render the person punishable under the sections of the Penal ledge of the spuriousness of the coin at the time of receiving possession of it, or the absence of such guilty knowledge at first. Such guilty knowledge may be proved either directly or indirectly from surrounding circumstances.—PARUSHULLAH MUNDUL T KHEROO MUNDUL; QUEEN v. GURIB SHEK; RAM RUTTUN SAHA v. BAWOOL MUNDUL, 23 W. R. 4 [Kemp and Birch, JJ. Nov. 30, 1874.]

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine any Delivery to another of coin as genuine, which, when first possessed, the deliverer did counterfeit coin, which he knows to be counterfeit, but which he did not know to be counterfeit at the not know to be counterfeit. time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit, and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under s. 239 or 240, as the care may be.

CHARGE.

day of , at First.—That you, on or about the , knowing a coin to he counterfeit, delivered the same to another person, by name A. B., as genuine, and thereby committed an offence punishable under s. 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Secondly.-That you, on or about the day of , knowing a coin to be counterfeit, attempted to induce another person, by name A. B, to receive it as genuine, and thereby committed an offence punishable under s. 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court] -Crim. Pro. Code (Act X. of 1882), Sch. V., Form XVIII. (II.).

Rulings.

WHERE the prisoner, being in possession of a counterfeit coin, handed it to a friend, in order to avoid its being discovered by the police in his (prisoner's) possession, it was held that no offence had been committed under s. 241, as the coin was not delivered as genuine. The gist of an offence under s. 241 (passing as genuine coin known to be counterfeit) is that a person should deliver or attempt to induce any other person to receive as genuine coin known to be counterfeit—QUEEN v. SODRUT, 4 N.-W. P. 62. [Spankie,]. April 27, 1872.]

WHERE the charge is one of counterfeiting Queen's coin, direct proof of fabricating is not necessary to render the person punishable under the sections of the Penal Code with reference to the uttering of false coin. All that is required is a guilty knowledge of the spuriousness of the coin at the time of receiving possession of it, or the absence of such guilty knowledge at first. Such guilty knowledge may be proved either directly or indirectly from surrounding circumstances.—PARUSHULLAH MUNDUL v. KHEROO MUNDUL; QUEEN v. GURIB SHEK; RAM RUTTUN SHAHA v. BAWOOL MUNDUL, 23 W. R. 4. [Kemp and Birch, JJ. Nov. 30, 1874.]

242. Wnoever fraudulently, or with intent that fraud may be commit- Ct. of Ses., ted, is in possession of counterfeit coin, having Presy. Mag., Possessione of counterfeit coin by person who knew it to be counterfeit when he be-

known at the time when he became possessed or Mag. of thereof that such coin was counterfeit, shall be Cognizable. punished with imprisonment of either description Warrant.

for a term which may extend to three years, and shall also be liable to fine.

Not bailable. Not comp.

Ditto.

Possession of Queen's coin by person who knew it to be counterfeit when he became

came possessed thereof.

possessed thereof.

243. Whoever fraudulently, or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of

either description for a term which may extend to seven years, and shall also be diable to fine.

A PRISONER, who was charged under s. 243, admitted possession, but denied fraudulent intention. In spite of the denial of fraudulent intention, the Sessions Judge recorded a plea of guilty, and convicted the accused thereon. In appeal, it was held that the conviction was bad, as the admission of possession on the part of the prisoner did not extend to an admission of fraud, which was the gist of the offence.—5 N. A., N.-W. P., Part II., 217, 1864.

244. Whoever, being employed in any mint lawfully established in Ct. of Ses. British India, does any act, or omits what he is Cognizable. Person employed in mint legally bound to do, with the intention of causing Not bailable. causing coin to be of different weight or composition from that fixed by law.

weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

any coin issued from that mint to be of a different Not comp. .

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Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

245. Whoever, without lawful authority, takes out of any mint, lawfully established in British India, any coining tool or Unlawfully taking from a instrument, shall be punished with imprisonment of mint any coining instrument. either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the Fraudulently or dishonestly composition of that coin, shall be purished with diminishing weight or altering composition of coin. imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of that coin.

Ditto.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or Fraudulently or dishonestly alters the composition of that coin, shall be punishdiminishing weight or altering composition of Queen's coin. ed with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

Altering appearance of coin with intent that it shall pass as coin of different descrip-

248. Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extende three years, and shall also be liable to fine.

Ditto.

Altering appearance Queen's coin with intent that it shall pass as coin of different description.

also be liable to fine.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been com; Delivery to another of coin possessed with knowledge mitted, and having known at the time when he that it is altered. became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fund may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shaft

Ditto.

251. Whoever, having coin in his possession with respect to which the Delivery of Queen's coin possessed with the knowledge offence defined in section 247 or 249 has been committed, and having known at the time when he bethat it is altered. came possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Presession of altered coin by a possessor who knew it to be altered when he became possessed thereof.

252. Whoever fraudulently, or with intent that fraud may be committed, Ct. of Ses., Presy, Mag., is in possession of coin with respect to which the or Mag. of offence defined in either of the sections 246 or 248 1st class. has been committed, having known at the time of Cognizable. Warrant. becoming possessed thereof that such offence had Not bailable. been committed with respect to such coin, shall be punished with imprison- Not comp. ment of either description for a term which may extend to three years, and shall also be liable to fine.

Ditto.

Possession of Queen's coin by a person who knew it to be altered when he became persessed them of.

258. Whoever fraudulently, or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and

shall also be liable to fine.

254. Who ever delivers to any other person as genuine, or as a coin of a Presy. Mag. different description from what it is, or attempts to or Mag. of 1st Delivery to another of coin induce any person to receive as genuine, or as a or 2nd class. different coin from what it is, any coin in respect Warrant. as genuine, which, when first possessed, the deliverer did not know to be altered. of which he knows that any such operation as that Not bailable. mentioned in section 246, 247, 248, or 249. has been performed, but in Not comp. respect of which to did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin

255. Whoever counterfeits, or knowingly performs any part of the pro- Ct. of Ses. Counterfeiting a Govern- cess of counterfeiting, any stamp issued by Govern- Cognizable. ment for the purpose of revenue, shall be punished Bailable. ment stamp. with transportation for life, or with imprisonment of either description for a term Not comp. which may extend to ten years, and shall also be liable to fine.

for which the altered coin is passed or attempted to be passed.

Explanation.—A person commits this offence who counterfeits by causlarg a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

Hasing possession of inrumentor material for purpose of counterfeiting Government stamp.

258. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

257. Whoever makes, or performs any part of the process of making, er buys, or sells, or disposes of, any instrument for Making or selling instruthe purpose of being used, or knowing or having ment for purpose of counter-feiting Government stamp. reason to believe that it is intended to be used, for

Ditto.

the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses. Cognizable: Warrant. Bailable. Not comp. 258. Whoever sells, or offers for sale, any stamp which he knows or has sale of counterfeit Government stamp.

The punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

Having possession of counterfeit of any stamp which he knows to be a counterfeit of any stamp issued by Government the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

Using as genuine Government stamp known to be counterfeit.

Using as genuine Government stamp known to be counterfeit.

of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ditto.

Effacing writing from substance bearing Government stamp, or removing from discument a stamp used for it, with intent to cause loss to Government.

Effacing writing from substance bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing.

or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

INTENTION is an essential part of the offence of fraudulently using false instruments for weighing; and, in any evidence of the absence of such intention in this case, the Court quashed the conviction, and directed the return of the fines.—GOVT. v. KANGALEB MUDUK, 18 W. R. 7. [Kemp and Glover, JJ. June 3, 1872.]

265. Whoever fraudulently uses any false weight or false measure of Presy. Mag. Fraudulent use of false length or capacity, or fraudulently uses any weight or Mag. of 1st or 2nd class. or any measure of length or capacity, as a different Uncog. weight or measure from what it is, shall be punished with imprisonment of Summons. either description for a term which may extend to one year, or with fine, Bailable.

266. Whoever is in possession of any instrument for weighing, or of any Being in possession of false weight, or of any measure of length or capacity, which he knows to be false, and intending that the weightsor measures. same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Ditto.

THE mere possession of weights in excess of the authorized standard will not support a conviction under s. 266 of the Penal Code. A fraudulent intent must be charged and proved.—Reg. v. Damodhar Dalji, i Bom. H. C. R. 181. [Couch and Tucker,]]. Jan. 27, 1864.]

THE mere possession of false weights or measures will not in itself raise any strong !presumption of fraud, as they may have been put away so as not to be used. The frauduent intent will be shown greatly by the place where they are found. Suppose a false polance was found fixed to a tradesman's counter where he was accustomed to sell his goods, and there was no other in the place. There would be, in the case, the strongest possible presumption that the possession was not innocent. On the other hand, suppose he had true balances in his shop, but an untrue one stowed away in an attic with a lot of lumber, there the presumption would be against fraud. A farmer had in his house a mance or portable weighing machine and two iron weights which were found by the inspector to be light. The inspector saw no produce about the premises, and could not prove that the farmer exposed or kept for sale, or weighed for conveyance or carriage any goods or produce, and it was held that the conviction of the farmer was wrong.—GRIFFITHS v. Place, 20 L. T., N. S., 484.

Ditto.

267. Whoever makes, sells, or disposes of, any instrument for weighing, Making or selling false or any weight, or any measure of length or capacity which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may exlend to one year, or with fine, or with both.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, Decency, and Morals.

268. A person is guilty of a public nuisance, who does any act, or is guilty See 133, C. F. of an illegal omission, which causes any common + Public nuisance. injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

[249] of tolling of large well, the low music NUISANCES punishable under the Penal Code may still be made the subject of civil action, before or without prosecution.—JINA RANCHHOD v. JODHA GHELLA, I Bom. H. C. R. I. [Forbes and Newton, JJ. June 30, 1863.]

A COMMON gaming-house is one which is kept or used for profit or gain, and may constitute a public nuisance; but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house and all persons who game therein, are guilty of a public nuisance within the meaning of s. 268 of the Penal Code.—Reg. v. HAU NAGJI, 7 Bom. H. C. R. 74. [Gibbs and Melvill, JJ. Dec. 1, 1870.]

At a certain village where a fair was annually held, the lambardars made arrangements at the time of the fair every year for the public sanitation of the place. In March 1875, the Deputy Commissioner, going to the place, found that the usual arrangements had not been made for the fair, and that the public road was for several hundred yards covered with feetid matter. The Deputy Commissioner tried the lambardars for committing a public nuisance, and convicted them. Held (by the Chief Court) that the conviction was bad, as there was no legal omission on the part of the lambardars.—Crown v. Guj Sing, Panj. Rec., No. 11 of 1875.

PERSONS placing a bamboo-stockade across a tidal navigable river for the purpose of fishing, although leaving in such stockade a narrow opening for the passage of boats which passage was, however, kept closed except on the actual passage of a boat, were charged at the instance of a sub-divisional officer with causing an obstruction under seasof the Penal Code. Held that, although it was doubtful whether s. 283 applied to the case, they had committed an offence under s. 268 of the Penal Code, and, were punishable under s. 200 of that Code.—In the Matter of Umesh Chandra Kar, I. L. R., 14 Cal. of the Penal Code, and were punishable under s. 200 of that Code.—In the Matter of Umesh Chandra Kar, I. L. R., 14 Cal. of the Penal Code, and the Code.—In the Matter of Umesh Chandra Kar, I. L. R., 14 Cal. of the Penal Code.

The accused cut up, on his verandah, meat that was to be cooked for a dinner party exposing it to the sight of persons passing along the road, among whom were some Jains whose temple was close by. The Jains complained to the Magistrate that the accused had made the air offensive, and caused annoyance. The Magistrate found that the meat was not in an offensive state, but convicted the accused of committing a public nuisance under s. 268 of the Penal Code, on the ground that he had done an act by which severa persons being Jains were much annoyed, it being a well-known fact that they had great repugnance to the killing of animals of every sort. Held, reversing the conviction ans sentence, that, in this case, no real damage or injury was caused to the public or to the people in general dwelling in the vicinity, and that it was a case of private rather than opublic nuisance, and, therefore not one falling within the purview of the criminal law. The applicant's act was an annoyance merely by reason of its hurting the feelings of the Jains, who have a repugnance to the killing of animals, and did not constitute an offence under s. 291 of the Penal Code. Muttumira v. Queen-Empress (I. L. R., 7 Mad. 590 referred to.—Queen-Empress v. Byramji Edalji, I. L. R., 12 Bom. 437. [Birdwood and Parsons, J]. Dec. 1, 1887.]

KEEPING dogs which make noises in the night amounts to a public nuisance.—2 Chit Crim. Law 647; I Russ. 452.

WHERE, upon an indictment against a tinman for the noise made by him in carry ing on his trade, it appeared in evidence that the noise only affected the inhabitants of three sets of chambers in Clifford's Inn, and that by shutting the windows the roise was in a great measure, prevented, it was ruled by Lord Ellenborough, C.J., that the indict ment could not be sustained, as the annoyance was, if anything, a private nuisance.—Rex v. LLOYD, I Russ. 318.

The mere fact of an encroachment on a tidal navigable river does not necessarily amount to a public nuisance so as to render a person causing such encroachment Irable in punishment under s. 290 of the Penal Code, but there must be evidence that such encroachment causes one of the results specified in s. 268. In the Matter of the Petition of Umer Chandra Kar (I. L. R., 14 Cal. 656) considered and commented on. The rule laid down in that case to the effect that any encroachment, however slight, on a tidal navigable river constitutes an offence under s. 290, is too widely stated. Each case should be determined on its own merits, and a decision arrived at as to whether the encroachment has caused at obstruction or not. The petitioner was charged with having erected a jag in a tidal navigable river, constructed of trees and dams, and thereby having committed offences under

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ss. 283 and 290 of the Penal Code. There was evidence to show that the jag was about 45 cubits long and 20 cubits broad, and that it was erected on the silted side of the river where it was about 300 hats broad, and that it did not obstruct the ordinary navigation of the river. The lower Court held that the jag could not but cause an obstruction, and conricted the petitioner under s. 283. Held that, as there was no evidence to show that the petitioner had caused any danger, obstruction, or injury to any person in any public way or line of navigation, the conviction under that section could not be sustained. Held further that he could not be convicted under s. 290, as there was no evidence of any obtraction to the ordinary navigation of the river.—JUGAL DAS DALAL v. QUEEN-EMPRESS, L. L. R., 28 Cal. 665. [Prinsep and Ameer Ali, JJ. Feb. 9, 1893.]

269. Whoever unlawfully or negligently does any act which is, and which Presy. Mag. of ist select to be likely to be knows or has reason to believe to be, likely to or and elect Negligent act likely to spread the infection of any disease dangerous to life, Cognizable, presidention of any disease bagerous to life. shall be punished with imprisonment of either de-Summons. cription for a term which may extend to six months, or with fine, or with both. Not comp.

INOCULATION in itself is not an illegal or negligent act, and unless it is proved that he act was done negligently, with the knowledge or belief that it was likely to spread he infection of a disease dangerous to life, or that there was negligent dealing with the atient after inoculation with the knowledge or belief as aforesaid, there can be no coniction in respect of such an act under s. 269.—Mad. H. C. Rul., July 10, 1867; 2 Mad.

Accused were convicted, under s. 269, for allowing accumulation of fifth and manure their villages. Held that this could not be construed into an act likely to spread inrtion of dangerous disease within the meaning of the section.—Crown v. Buth Singh, anj. Rec., No. 25 of 1872.

K knowing that he was suffering from cholera, entered a train as a passenger withut informing the Railway Company's servants of his condition. M knowing of K's conition, bought K's ticket, and travelled with him. Held that K was properly convicted ader s. 269 of the Penal Code of negligently doing an act which was, and which he had eason to believe was, likely to spread infection of a disease dangerous to life, and M of betment of K's offence.—Queen-Empress v. Krishnappa, I. L. R., 7 Mad. 276. [Turner,

A PROSTITUTE who, while suffering from syphilis, communicates the disease to a perin who has sexual intercourse with her, is not liable to punishment under s. 260 of the enal Code (Act XLV. of 1860) "for a negligent act and one likely to spread infection of my disease dangerous to life." Semble.—She may be charged with cheating under s. 417 wa r 420, if the intercourse was induced by any misrepresentation on her part.—QUEEN-EM-RESS v. RAKHMA, I. L. R., 11 Bom. 59. [West and Nanabhai Haridas, JJ. Sep. 30, 1886.]

لمحاد Ditto.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the in-Malignant act likely fection of any disease dangerous to life, shall be punread infection of any disse dangerous to life. ished with imprisonment of either description for a rm which may extend to two years, or with fine, or with both.

271. Whoever knowingly disobeys any rule made and promulgated by Presy. Mag. sobedience to a quaranthe Government of India, or by any Government, for or Mag. of 1st putting any vessel into a state of quarantine, or for or and clustering the interceptive of vessels in a state of quarantine with the shore of Summons. th other vessels, or for regulating the intercourse between places where an Bailable, fections disease prevails and other places, shall be punished with imprison. Not comp. ent of either description for a term which may extend to six months, or with se, or with both. B. BASU

vide m. 5 di 9. 149 for il-25 definition (with entreme meteortene, enmi)

^{*} See Act I. of 1870 (to provide rules relating to quarantine).

riving water with milk, sloe leaves with the se wo alle plear, doctored with stry channe Shirit mine with (a Kao. Coaked with red lead se are punishable. Sacs, 272-277.] PUBLIC HEALTH, SAFETY, &c. [CHAP. XIV.

Presy Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp. 272. Whoever adulterates any article of food or drink, so as to make such Adulteration of food or article noxious as food or drink, intending to sell drink intended for sale. such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ditto.

Sale of noxious food or article which has been rendered or has become noxious or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Accused sold a quantity of atta at the rate of 18 seers per rupee, the price of atta of good quality being a rupee for fifteen seers. A medical officer deposed that the atta was "old and gritty," and "would be bad for the health if eaten." Accused told the purchaser at the time of the sale that the atta was being sold cheap, because it was "bad" or of an inferior quality. Held that the facts did not warrant a conviction under s. 273.—Crown v. Gunesh, Panj. Rec., No. 15 of 1873.

Ditto.

Adulteration of drugs.

Adulteration of drugs.

Adulteration of drugs.

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Ditto.

Sale of adulterated drugs.

Sale of adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

Ditto.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from Sale of any drug as a different drug or preparation.

Sale of any drug as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thou sand rupées, or with both.

Any Mag. Cognizable. Summons. Bailable. Not comp.

Fouling the water of a public spring or reservoir. So as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

The words "public spring or reservoir," used in s. 277 of the Penal Code, do not il clude a public river. The strewing of branches in a river for fishing purposes, held, there

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fore, to be no offence under that section.—EMPRESS v. HALODHUR PORE, I. L. R., 2 Cal. 383. [Markby and Prinsep,]]. May 7, 1877.]

The term "public spring" in s. 277 of the Penal Code does not include a continuous stream of water running along the bed of a river.—Reg. v. VITTI СНОККАН, I. L. R., 4 Mad. 222. [Innes and Muttusami Ayyar, JJ. Oct. 21, 1881.]

278. Whoever voluntarily viriates the atmosphere in any place so as to Any Mag. make it noxious to the health of persons in general Summons. Making atmosphere noxidwelling or carrying on business in the neighbour- Bailable. **bood**, or passing along a public way, shall be punished with fine which may Not comp. extend to five hundred rupees.

279. Whoever drives any vehicle, or rides, on any public way, in a man- Any Mag Bash driving or riding on a ner so rash or negligent as to endanger human life, Cognizable. or to be likely to cause hurt or injury to any other Summons. Bailable. person, shall be punished with imprisonment of either description for a term Not comp. which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

THE actual driver, and not the owner, of a carriage, is liable under s. 270 of the Penal Code in case of a collision and injury to another arising out of rash driving.—LARRYMORE (A. W.) v Pernendoo Deo Rai, 14 W. R. 32. [Bayley and Kemp, JJ. Aug. 13, 1870.]

DEFENDANT was convicted under s. 338 of the Penal Code of causing grievous hurt. The evidence showed that the defendant was being driven in a carriage to her house through the streets of the town between the hours of 7 and 8 P.M.; that the carriage was being driven at an ordinary pace and in the middle of the road; that the night was dark and the carriage without lamps, but that the horse-keeper and coachman were shouting out to warn foot-passengers; that the defendant's carriage came into contact with the complainant's father, an old deaf man, and that complainant's father was thereupon knocked down, run over, and killed. Held, upon a reference, that the question for the Court was whether there was any evidence that the death of the deceased was induced by an act negligently and rashly directed by the accused, and that there was no such evidence. The conviction was accordingly quashed.—Pro., Aug. 17, 1871, 6 Mad. H. C. R., Ap., 31.

280. Whoever navigates any vessel in a manner so rash or negligent as to Presy Mag.

the navigation of a vessel endanger human life, or to be likely to cause hurt or or Mag. of 1st Rash navigation of a vessel. injury to any other person, shall be punished with or 2nd class. imprisonment of either description for a term which may extend to six months, Summons. or with fine which may extend to one thousand rupees, or with both.

Bailable. Not comp.

281. Whoever exhibits any false light, mark, or buoy, intending or know-Ct. of Ses. hibition of a false light, ing it to be likely that such exhibition will mislead Cognizable. Exhibition of a false light, any navigator, shall be punished with imprisonment Warrant. mark, or buoy. of sither description for a term which may extend to seven years, or with fine, Not comp. or with both.

282. Whoever knowingly or negligently conveys, or causes to be convey- Presy. Mag. ed, for hire any person by water in any vessel, when or Mag. of 1st Conveying person by water that vessel is in such a state or so loaded as to en-Cognizable. for hire in a vessel overloaded or unsafe. danger the life of that person, shall be punished with Summons. imprisonment of either description for a term which may extend to six months, Bailable. or with fine which may extend to one thousand rupees, or with both.

• BOATMEN, who ply an unseaworthy vessel, whereby the lives of passengers for hire rare endangered, should be charged under s. 282, and not under s. 336 of the Penal Code.—Reg. v. Khoda Jagra, 1 Bom. H. C. R. 137. [Forces and Couch, J]. Jan. 8, 1864.]

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Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp. 283. Whoever, by doing any act, or by omitting to take order with any Danger or obstruction in a public way or navigation.

public way or public line of navigation, shall be punished with fine which extend to two hundred rupees.

WHERE an accused, for having repaired a public road without having previous the for leave to repair it, was, on a simple petition, charged with having obstructed the and the complainant never appeared, held that the Deputy Magistrate ought to be missed the complaint.—Queen v. Bholanath Banerjee, 7 W. R. 31. [Kempand 1987]]. Feb. 16_1867.]

To spread fishing nets by the side of a thoroughfare in a town is neither an punishable under el. 3, s. 48, Act XXIV., 1859, nor, without proof of obstruction to any particular person or class of persons, under s. 283, Penal Code. a full report of the case: "In this case the prosecutor (a policeman) deposed that a bad-smelling net dried on the road by the side of the house of the first accused, cause obstruction to persons passing by. The second accused admitted the net and had been left there by him. The Magistrate convicted the second accused und s. 48, Madras Police Act (XXIV. of 1859), and fined him one rupee. The case ferred by the District Magistrate of Madura for the orders of the High Court, on the that the action of the accused in drying nets in the street did not, in his opinion, tute such an obstruction as is contemplated in cl. 3, s. 48, Act XXIV., 1859. appeared at the hearing. The Court (Innes and Muttusami Ayyar, JJ.) delivered appeared at the hearing. The Court (Innes and Muttusami Ayyar, JJ.) delivered lowing judgment: Cl. 3, s. 48, Madras Police Act (XXIV. of 1859), under wh accused has been convicted, refers to obstruction of the road or street caused by conveyances, in certain circumstances therein detailed. The act of the accordance spreading fishing nets by the side of the road was clearly, therefore, not punishable this clause of s. 48 of the Act. The present conviction cannot also, in our opin sustained as a conviction under s 283, Penal Code, because, although it is stated. evidence, in general terms that obstruction was caused, it does not appear that obst was caused to any particular individual or individuals. The conviction is accordingly quashed. The fine collected from the accused must be refunded."—Reg. v. Lights MOIDIN, I. L. R., 4 Mad. 235. [Innes and Muttusami Ayyar, J]. Nov. 7, 1881.]

Persons placing a bamboo-stockade across a tidal navigable river for the purpheof fishing, although leaving in such stockade a narrow opening for the passage of thats, which passage was, however, kept closed except on the actual passage of a boat receiver charged, at the instance of a sub-divisional officer, with causing an obstruction under 283 of the Penal Code. Held that, although it was doubtful whether s. 283 applied to the case, they had committed an offence under s. 268 of the Penal Code, and were punishable under s. 290 of that Code.—In the Matter of Umesh Chandra Kar, I. L. R., a Cal. 656. [Petheram, C.J., and Beverley, J. July 9, 1887.]

THE mere fact of an encroachment on a tidal navigable river does not necessarily amount to a public nuisance so as to render a person causing such encroachment like to punishment under s. 290 of the Penal Code, but there must be evidence that such encourage ment causes one of the results specified in s. 268. In the Matter of the Petition of the seast Chandra Kar (I. L. R., 14 Cal. 656) considered and commented on. The rule labeled in that case to the effect that any encroachment, however slight, on a tidal navigable tiver, constitutes an offence under s. 290, is too widely stated. Each case should be detailed on its own merits, and a decision arrived at as to whether the encroachment had an obstruction or not. The petitioner was charged with having erected a jag in a tidal navigable river, constructed of trees and dams, and thereby having committed sunces under ss. 283 and 290 of the Penal Code. There was evidence to show that the far was about 45 cubits long and 20 cubits broad, and that it did not obstruct the ordinary subjection of the river. The lower Court held that the jag could not but cause an obstruction and convicted the petitioner under s. 283. Held that, as there was no evidence to thought the petitioner had caused any danger, obstruction, or injury to any persons and held further, that he could not be convicted under s. 290, as there was no evidence of any obstruction to the ordinary navigation of the river.—JUGAL DAS DALAL v. Seemen and the petition of the river of the ordinary navigation of the river.—JUGAL DAS DALAL v. Seemen Empersor. It is a subject to the ordinary navigation of the river.—JUGAL DAS DALAL v. Seemen and the petition of the ordinary navigation of the river.—JUGAL DAS DALAL v. Seemen and the petition of the ordinary navigation of the river.—JUGAL DAS DALAL v. Seemen and the petition of the ordinary navigation of the river.—JUGAL DAS DALAL v. Seemen and the petition of the river.—JUGAL DAS DALAL v. Seemen and the petition of the river.—JUGAL DAS DALAL v. Seemen and the petition of

284. Whoever does, with any poisonous substance, any act in a manner Presy. Mag. so rash or negligent as to endanger human life, or or Mag. of 1st Negligent conduct with reto be likely to cause hurt or injury to any other per-Uncog. spect to any poisonous sub-stance. son, or knowingly or negligently omits to take such Summons. order with any poisonous substance in his possession as is sufficient to guard Bailable. against any probable danger to human life from such poisonous substance,

shall be punished with imprisonment of either description for a term which may extend to-six months, or with fine which may extend to one thousand rupees, or with both.

S.T 285. Whoever does, with fire or any combustible matter, any act so rashly Any Mag or negligently as to endanger human life, or to be Cognizable. likely to cause hurt or injury to any other person, or Bailable. Negligent conduct with respect to fire or combustible knowingly or negligently omits to take such order Not comp. with any fire or any combustible matter in his possession as is sufficient to goard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

CHR word "injury" (rashly caused by fire, &c.) in s. 285 of the Penal Code includes any harm illegally caused to the property of any other person, and is not confined to injury to the person only.—REG. v. NATHA LALLA, 5 Bom. H. C. R. 67. [Newton and Tucker, JJ. Aug. 6, 1868.]

S.T. 286. Whoever does, with any explosive substance, any act so rashly or Negligent conduct with re- negligently as to endanger human life, or to be likely spect to explosive substance. to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ditto. _

C, HAVING returned to his house after dawn from watching his crops at night with a loaded gun, and finding his house-door locked, placed the gun, loaded, with the hammer down on the cap, on a cot outside his house, and went for a short time to a neighbouring house. A, the child of a neighbour, four years old, was killed by the gun exploding. C was convicted under s. 286 of the Penal Code for negligently omitting to take order with the gua sufficient to guard against probable danger to human life. Held that the conviction was bad in law.—QUEEN-EMPRESS v. CHENCHUGADU, I. L. R., 8 Mad. 421. [Brandt, . April 30, 1885.

Negligent conduct with respect to machinery in pos-

287. Whoever does, with any machinery, any act so rashly or negligently Presy. Mag. as to endanger human life or to be likely to cause hurt or Mag. of 1st or injury to any other person or knowingly or notificated. or injury to any other person, or knowingly or negli- Uncog. gently omits to take such order with any machinery Summons. in his possession or under his care as is sufficient to Not comp.

guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

238. Whoever, in pulling down or repairing any building, knowingly or Ditto. negligently omits to take such order with that build-**Neglipence** with respect to ing as is sufficient to guard against any probable dan-

iling down or repairing ger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Any Mag. Cognizable. Summons. Bailable. Not comp. Negligence with respect to animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

A PONY is an animal within the provisions of s. 289. To sustain a charge under s. 289, there should be evidence, not only of negligence, but also that such negligence would probably lead to danger to human life or of grievous hurt.—PRO., April 8, 1867, 3 Mad. H. C. R., Ap., 33.

The order of a Deputy Magistrate prohibiting the owners of cattle from allowing their animals to stray, and a conviction under s. 289 of the Penal Code against the accessed for permitting his pony to stray, were quashed as illegal upon a reference under s. 434 of the Code of Criminal Procedure (Act X. of 1872), corresponding with ch. 32 of the new Code of Criminal Procedure (Act X. of 1882).—Govt. v. Mozuffer Khalifa, 18 W. R. 21; 9 B. L. R., Ap., 36. [Kemp and Glover, JJ. June 21, 1872.]

THE High Court refused to interfere with an order passed under s. 289 of the Penal-Code by a Magistrate fining the owner of a pony which had been tied negligently, and which was running about loose in a crowded bazar, and thereby endangering the lives and limbs of persons, that section referring, not only to savage animals, but to any animal—IN THE MATTER OF CHAND MANDAL, 19 W. R. I. [Kemp and Glover, J]. Nov. 29, 1872.]

Any. Mag. Uncog. Summons. Bailable. Not comp. Punishment for public nuishable by this Code, shall be punished with fine sance. Which may extend to two hundred rupees.

THE omission of a person to keep his ponies from straying is not a public nuisance punishable under s. 200 of the Penal Code.—JOYNATH MUNDUL v. JAMUL SHEIKH, 6 W. R. 71. [Kemp and Markby, J]. Sep. 8, 1866.]

THE establishment of a butcher's shop is not an indictable nuisance under s. 200, but may become a nuisance if it be carried on in such a way as to be offensive to a section of the community, or without due regard to the feelings of any class.—EESA 2. KEEMOO, Panj. Rec., No. 18 of 1867.

In a case of public nuisance under s. 290 of the Penal Code, it must be proved that injury, danger, or annoyance, has been caused either in regard to the enjoyment of property, or the exercise of a public right on the part of a portion of the community, or of any particular class of people. The fact that there is a special law to meet a particular offence (in this case, cattle-trespass) does not prevent the punishment of the offenders under the Penal Code, if an offence which could have been rightly punished under the Penal Code was established.—Onooram v. Lambssor; Webster v. Keena, 9 W. R. 70. [Phear and Hobhouse, J]. May 23, 1868.]

THE sentence of imprisonment passed in default of the payment of a fine inflicted under s. 200 of the Penal Code (for committing a public nuisance) should be one of simple, not rigorous, imprisonment—Reg. v. Santu Bin Lakhappa Kore, 5 Bom. H. C. R. 45. [Couch, C.J., and Newton, J. June 17, 1868.]

CERTAIN Hindus charged certain Muhammadans with nuisance, in that they had opened a cook shop, and carried on their business in a manner calculated to give annoyance. Disputes of this nature being frequent, the Magistrate ordered the shop to be closed, pending reference to a committee of respectable Hindus and Muhammadans of the city, in conjunction with whom he prepared and promulgated for observance by both sects a set of rules, which included rules for the management of a Hindu temple and a Muhammadan mosque in the neighbourhood. Held that the Magistrate had no authority to interfere in the management of the temple and mosque, and should have confined

himself to deciding whether the shop complained of was or was not a nuisance; that that was a question which did not depend entirely on the shop being a cook-shop, or on beef being sold there (though that might, under certain circumstances, amount to a suisance), but whether the business of the shop (in itself a lawful business) was or was not conducted in such a manner as to give annoyance to the public in the vicinity.—Assa Nuko w. Hosseld Buksh, Panj. Rec., No. 15 of 1868.

A PROSTITUTE, by visiting a dak-bungalow at the request of a person staying there, but against whom there is no evidence of any impropriety of speech, or gesture, or act, or that she had occasioned annoyance to the public generally, or to any persons who, in the exercise of their public right, were lodging in the bungalow, is not liable to be convicted under s. 200 of the Penal Code as having committed a public nuisance.—Queen v. Mussumat Begum, 2 N.-W. P. 349. [Turner, Offg. C.J., and Turnbull, J. Aug. 1870.]

A COMMON gaming-house is one which is kept or used for profit or gain, and may constitute a public nuisance; but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house, and all persons who game therein, are guilty of a public nuisance within the meaning of a 268 of the Penal Code.—Reg. v. Hau Nagji, 7 Bom. H. C. R. 74. [Gibbs and Melvill,]]. Dec. 1, 1870.]

THE petitioners, who filled up a portion of a ditch or drain, which formed part of a public way, and which belonged to the public, instead of being convicted of a nuisance punishable under s. 290, Penal Code, were convicted of criminal trespass. But, inasmuch as they had not been sentenced to a heavier punishment than might have been awarded if they had been convicted of a nuisance, the High Court declined to interfere.—IN THE MATTEROF ROPPNARAIN DUTT, 18 W. R. 38. [Couch, C.J., and Ainslie, J. Aug. 2, 1872.]

The trial of 14 persons together charged with distinct offences (committing public misance), under ss. 290 and 291 of the Penal Code was held an irregularity calculated to prejudice the accused. Convictions quashed.—Pulisanki Reddi v. Reg., I. L. R., 5 Mad. 20. [innes and Muttusami Ayyar, JJ. Feb. 24, 1882.]

A SENTENCE of rigorous imprisonment in default of payment of fine for the offence of misaace under s. 290 of the Penal Code is legal.—Reg. v. Yellamandu, I. L. R., 5 Mad. 157. [Innes and Muttusami Ayyar, J]. Mar. 14, 1882.]

Omission to fence a well on private ground within eight yards of a highway, and open to it, is not punishable as a public nuisance.—Queen v. Anthony, I. L. R., 6 Mad. 280. [Innes and Kernan, J]. Feb. 23, 1883.]

CERTAIN Mahomedan inhabitants of a village erected, during the Muharram, a temporary shed on land forming part of the village-site, and placed in the shed a religious symbol. They were convicted by a Magistrate under s. 290 of the Penal Code of com-smitting a public nuisance, on the ground that their act was certain to cause annoyance to the Hindu inhabitants of the village whose temples were in the vicinity, and was, therefore, calculated to lead to a breach of the public peace. Held that the conviction was illegal.—MUTTUMIRA v. QUEEN-EMPRESS, I. L. R., 7 Mad. 590. [Turner, C.J., and Hutchins, J. Sep. 18, 1884.]

A PERSON wilfully slaughtering cattle in a public street, so that the slaughter could be heard and seen by the passers-by, would commit an offence punishable under s. 200 of the Penal Code. But where certain Muhammadans, for a religious purpose, killed two lows before sunrise in a private compound partly visible from a public road, and the killing of one of the cows only was witnessed by one Hindu, held that the circumstances proved lid not amount to the commission of a public nuisance as defined in s. 268 of the Code.—Wattumira v. Queen-Empress (I. L. R., 7 Mad. 599) referred to.—Queen-Empress v. Zatuuddin, I. L. R., 10 All. 44. [Brodhurst, J. June 22, 1887.]

The accused cut up, on his verandah, meat that was to be cooked for a dinner-party, mposing it to the sight of persons passing along the road, among whom were some ains, whose temple was close by. The Jains complained to the Magistrate that the reused had made the air offensive, and caused annoyance. The Magistrate found hat the meat was not in an offensive state, but convicted the accused of committing a

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public nuisance, under s. 268 of the Penal Code, on the ground that he had done an act by which several persons being Jains were much annoyed, it being a well-known fact that they had great repugnance to the killing of animals of every sort. Held, reversing the conviction and sentence, that in this case no real damage or injury was caused to the public or to the people in general dwelling in the vicinity, and that it was a case of private rather than of public nuisance, and therefore not one falling within the purview of the criminal law. The applicant's act was an annoyance merely by reason of its hurting the feelings of the Jains who have a repugnance to the killing of animals, and did not constitute an offence under s. 201 of the Penal Code. Muttumira v. Queen-Empres (I. L. R., 7 Mad. 590) referred to.—Queen-Empress v. Byramji Edalji, I. L. R., I. Bom. 437. [Birdwood and Parsons, J]. Dec. 1, 1887.]

PERSONS placing a bamboo-stockade across a tidal navigable river for the purpose of fishing, although leaving in such stockade a narrow opening for the passage of boats which passage was, however, kept closed except on the actual passage of a boat, were charged, at the instance of a sub-divisional officer, with causing an obstruction under s. 281 of the Penal Code. Held that, although it was doubtful whether s. 283 applied to case, they had committed an offence under s. 268 of the Penal Code, and were punishable under s. 290 of that Code.—IN THE MATTER OF UMESH CHANDRA KAR, I. L. R., 14 Cal. 656. [Petheram, C.J., and Beverley, J. July 9, 1887.]

THE mere fact of an encroachment on a tidal navigable river does not necessarily amount to a public nuisance so as to render a person causing such encroachment liable to punishment under s. 200 of the Penal Code, but there must be evidence that such encroachment causes one of the results specified in s. 268. In the Matter of the Petition of Umesh Chandra Kar (I. L. R., 14 Cal. 656) considered and commented on. The rule last down in that case, to the effect that any encroachment, however slight, on a tidal navigable river, constitutes an offence under s. 290, is too widely stated. Each case should be determined on its own merits, and a decision arrived at as to whether the encroachmen has caused an obstruction or not. The petitioner was charged with having erected a joint and a period of the petitioner was charged with having erected a joint and the petitioner was charged with having erected a joint and the petitioner was charged with having erected a joint and the petitioner was charged with having erected a joint and the petitioner was charged with having erected a joint and the petitioner was charged with having erected a joint and the petitioner was charged with having erected a joint and the petitioner was charged with having erected a joint and the petitioner was charged with having erected a joint and the petitioner was charged with having erected a joint and the petitioner was charged with having erected a joint and the petitioner was charged with having erected a joint and the petitioner was charged with having erected a joint and the petitioner was charged with having erected a joint and the petitioner was charged with having erected a joint and the petitioner was charged with having erected a joint and the petitioner was charged with the petitioner was charged and the in a tidal navigable river, constructed of trees and dams, and thereby having committee offences under ss. 283 and 290 of the Penal Code. There was evidence to show that the jag was about 45 cubits long and 20 cubits broad, and that it was erected on the silter side of the river where it was about 300 hats broad, and that it did not obstruct the ordinar navigation of the river. The lower Court held that the jag could not but cause an obstruc tion, and convicted the petitioner under s. 283. Held that, as there was no evidence to show that the petitioner had caused any danger, obstruction, or injury to any person le any public way or line of navigation, the conviction under that section could not be sus tained. Held, further, that he could not be convicted under s. 290, as there was no evidence of any obstruction to the ordinary navigation of the river.- JUGAL DAS DALAL v. QUEEN EMPRESS, I. L. R., 20 Cal. 665. Prinsep and Ameer Ali, J. Feb. 9, 1893.]

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

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291. Whoever repeats or continues a public nuisance, having been Continuance of nuisance after injunction to discontinue. The injunction to discontinue the injunction nuisance, shall be punished with simple imprisonment for a stern which may extend to six months, or with fine, or with both.

BEFORE a conviction can be had of committing a public nuisance under s. 20%, the must be proof that there was a previous conviction of an offence, and an injunction be a public servant to desist from continuing such nuisance.—IN THE MATTER OF MOHES CHUNDER, 20 W. R. 55. [Jackson and Mitter, J]. May 21, 1873.]

The trial of 14 persons together charged with distinct offences (committing publi nuisance) under ss. 290 and 291 of the Penal Code was held an irregularity calculate to prejudice the accused. Convictions quashed.—Pulisanki Reddi v. Reg., I. L. R., Mad. 20. [Innes and Muttusami Ayyar, J]. Feb. 24, 1882.]

To support a conviction under s. 201 of the Penal Code, there must be proof of a injunction to the accused individually against repeating or continuing the same particular public nuisance. It must be shown that the person convicted had, on some previous occasion, committed the particular nuisance, had been enjoined not to repeat o continue it, and had repeated or continued it. The authority under which a Magistrab can order or enjoin a person against repeating or continuing a public nuisance is s. 14

of the Criminal Procedure Code. It is the infringement of this order that is punishable under s. 291 of the Penal Code. What is contemplated is an order addressed to a particular person. A Magistrate's power to deal with public nuisances are contained in this 10 and 11 of the Criminal Procedure Code. Ch. 11 is only properly applicable to temporary orders in urgent cases. It is only in such cases that an order may be made ex parte, and any exception is allowed to the general rule that it shall be directed to a particular individual. In such emergent cases, an order may, under s. 144 of the Code, be directed to the public generally, when frequenting or visiting a particular place, to abstain from a certain act; but this provision does not apply to a proclamation directed, not to the public generally, frequenting or visiting a particular place, but to a portion of the community.—Queen-Empress v. John I. L. R., 8 All. 99. [Oldfield, J. Jan. 15,

ST 292. Whoever sells or distributes, imports or prints for sale or hire, or Presy. Mag. or Mag. of 1st wilfully exhibits to public view, any obscene book. or Mag. of 1st or 2nd class. Sale, &c., of obscene books. pamphlet, paper, drawing, painting, representation, Cognizable. or figure, or attempts or offers so to do, shall be punished with imprisonment Warrant. Bailable. Not comp. fine, or with both.

Exception.—This section does not extend to any representation sculpturengraved, painted, or otherwise represented, on or in any temple or on ed, engraved, painted, or otherwise represented, on or in any temple, or on my car used for the conveyance of idols, or kept or used for any religious

A CHARGE under ss. 292 and 294 of the Penal Code should be made specific in regard to the representations and words alleged to have been exhibited and uttered, and what were the particular representations and words which he found on the evidence had been exhibited and uttered, and which he adjudged to be obscene within the meaning of those sections. Where no such specific decision has been given, the High Court, when the case has been transferred under s. 147, Act X. of 1875 (corresponding with 526, Act X. of 1882), may either try the case de novo, or dismiss it, on the ground that he Magistrate has come to no finding on which the conviction can be sustained.—REG. v. PENDRONATH Doss, I. L. R., 1 Cal. 356. [Phear and Markby, JJ. Mar. 20, 1876.]

Ditto.

293. Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding section Having in possession obfor the purpose of sale, distribution, or public exscene books for sale or exhibihibition, shall be punished with imprisonment of ather description for a term which may extend to three months, or with fine, or with both.

A BOOK may be obscene within the meaning of the Penal Code, although it contains at a single obscene passage. The defence to a charge of selling and distributing certain obscene books was that they were sold and distributed in good faith in prosecution of a eligious controversy. Held that the excessive obscenity of such books took away the rotection which their controversial nature might otherwise have afforded them. Also hat the intention of the seller and distributor must be gathered from the character of the natter contained in such books. As he had chosen to sell and distribute what was obcene, it must be presumed that he intended the natural consequences of his act, namely, orruption of the minds and prejudice of the morals of the public. It was not sufficient or him to say that his intentions were good. It was his public act that must be the test of his intentions; and, having done an unlawful act, it was no answer to say that he hought it lawful. Queen v. Hicklin (L. R., 3 Q. B. 360) and Steele v. Brannan (L. R., 7 C. P. 261) followed. At the conclusion of the trial of a person for the sale and disribution of obscene books, the Court trying him ordered the destruction of certain copies of such books, voluntarily surrendered by him, under s. 418 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 517 of the new Code of Criminal Procedure
Act X. of 1882). Held that such Court was not empowered by that section to make such m order.—Empress v. Inderman, I. L. R., 3 All. 837. [Straight, J. June 3, 1881.] with cathari

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in gistrate, in convicting, should, in his decision, state definitely what were the instanlar representations and words which he found on the evidence had been exhibited and uttered. Where no such specific decision has been come to, the High Court, when the case has been transferred under Act X. of 1875, s. 147 (corresponding with Act X. of 1882, s. 526), may either try the case de novo, or dismiss it, on the ground that the lagistrate has come to no finding on which the conviction can be sustained.—Rec. Uter-DRONATH Doss, I. L. R., 1 Cal. 356. [Phear and Markby, JJ. Mar. 9, 16, 20, 1876]

Any Mag. Uncog. Summons. Bailable. Not comp. Sanction. Keeping lottery-office.

Keeping lottery-office.

Keeping lottery-office.

Keeping lottery-office.

Solution and lottery not authorized by Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, of any event or contingency relative or applicable to the drawing of any ticket lot, number, or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.*

No charge of an offence punishable under s. 294A shall be entertained by aux Contuniess the prosecution be instituted by order of, or under authority from, the Local Government.—A& XXVII. of 1870, s. 14.

THE sanction of the Local Government is necessary before a charge for heaping lottery-office under s. 10, Act XXVII. of 1870, can be instituted.—Govt. s. Nea Care 15 W. R. 2; 6 B. L. R., Ap., 98. [Norman, Offg. C.J., and Loch, J. Jan. 17, 1871.]

The expression "in any such lottery" in para. 2 of s. 294A of the Penal Code men "any lottery not authorized by Government," and includes a foreign lottery. The west "publisher" in the above paragraph includes both the person who sends a proposal a well as the proprietor of a newspaper who prints the proposal as an advertisement. The proprietor of a Bombay newspaper, who published an advertisement in his paper, relaing to a Melbourne lottery, was accordingly held to be punishable under, s. 294A of the Penal Code.—Quben-Empress v. Mancherji Kavasji Shapurji, I. L. R., 10 Bom. g [Nanabhai Haridas and Wedderburn, JJ. Aug. 18, 1885.]

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION. WH

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

1995. Whoever destroys damages, or defiles any place of worship, or lipining or defiling place of object held sacred by any class of persons, with intention of thereby insulting the religion of worship, or lipining or lipining the religion of worship.

worship, with intent to insult the religion of any class.

class of persons is likely to consider such destruction, damage, or deficient

^{*} New section inserted by Act XXVII. of 1870, s. 10. pollute

[260].

For section 294 of the Indian Penal Code the following has been sub stituted by section 3 of Act III. of

Obscene acts and songs. S.T. 294. Whoever, to the annoyance of others,-

- (a) does any obscene act in any public place, or
- (b) sings, recites, or utters any obscene song, ballad, or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

Tyrrell, and Mahmood, JJ. Dec. 20, 1887.]

The word "object" in s. 205 of the Penal Code does not include animate objects. A ball dedicated and set at large at the Sradha of a Hindu in accordance with religious usage is not an "object" within the meaning of that section. Where such an animal was killed by certain Mahomedans secretly and at night in the presence of none but Mahomedans for the sake of the meat and value of the skin, held that no offence had been committed under s. 295. Queen-Empress v. Imam Ali (I. L. R., 10 All. 150) followed. Held, further, that such a bull is not "moveable property" within the meaning of ss. 378 and 403, or "property" within the meaning of s. 425 of the Penal Code, and could soft therefore be the subject of theft, criminal misappropriation, or mischief. The fact that such a bull receives some attention from the cowherd of the persons who set it at liberty, and is daily fed by him by direction of his employers, and is not used for breeding purposes without their permission being asked, is not inconsistent with a total surrender by those who set it at liberty of all their rights as proprietors. Queen-Empress v. Banchu (I. L. R., 8 All. 51) followed. Queen-Empress v. Nalla (I. L. R., 11 Mad. 145) referred to and commented on. For the purpose of construing a section of an Act, and ascertaining the Intention of the Legislature, the Report of the Indian Law Commissioners or a Select Committee appointed to consider a Bill may be referred to. Queen-Empress v. Kartick Chunder Das (I. L. R., 14 Cal. 721) followed.—ROMESH CHUNDER SANNYAL v. HIRU MONDAL, I. L. R., 17 Cal. 852. [Norris and Macpherson, JJ. Mar. 27 & April 15, 1890.] 8.39

298. Whoever voluntarily causes disturbance to any assembly lawfully Presy, Mag. Disturbing religious assem-.. engaged in the performance of religious worship or Mag. of 1st or religious ceremonies shall be punished with or 2nd class. Cognizable. imprisonment of either description for a term which may extend to one year, Summons. or with fine, or with both.

A MASJID was used by the members of a sect of Mahomedans called the Hanifis, according to whose tenets the word "amen" should be spoken in a low tone of voice. While the Hanifis were at prayers, R, a Mahomedan of another sect, entered the masjid, and in the course of the prayers, according to the tenets of his sect, called out "amen" in a loud tone of voice. For this act he was convicted of voluntarily disturbing an assembly engaged in religious worship, an offence punishable under s. 296 of the Penal The Full Bench (Mahmood, J., dissenting) ordered the case to be re-tried, and that, in re-trying it, the Magistrate should have regard to the following questions, namely: (1) Was there an assembly lawfully engaged in the performance of religious worship? (2) Was such assembly, in fact, disturbed by the accused? (3) Was such disturbance caused by acts and conduct on the part of the accused by which he intended to came such disturbance, or which acts and conduct, at the time of such acts and conduct, he knew or believed to be likely to cause such disturbance? Held, by Mahmood, J., that the discussion occasioned by the act of the accused having, presumably, taken place during the interval when the prayers were not going on, the assembly was not at that time "engaged in the performance of religious worship," and was not "disturbed" within the meaning of s. 200 of the Penal Code; that, in reference to the terms of s. 30 of the Code, the accused did not disturb the assembly "voluntarily;" that he was justified by the Mahomedan ecclesiastical law in entering the mosque, and joining the congregation

Bailable. Not comp.

SECS. 297, 298.] OFFENCES AFFECTING THE HUMAN BODY. [CHAP. XVI.

view of s. 79 of the Penal Code, and was, therefore, not an offence under s. 296. Beatly v. Gillbanks (L. R., 9 Q. B. D. 308) referred to. Also per Mahmood, J., that, having regard to the guarantee given by the Legislature to s. 24 of Act YI. of 1871 (Bengal Civil Courts Act), that the Mahomedan law shall be administered in all questions regarding "any religious usage or institution," the Court was bound, by s. 57 of Act I. of 1872 (Evidence Act), to take judicial notice of the Mahomedan ecclesiastical law, and the rules of that law need not be proved by specific evidence.—Queen-Empress v. Ranzan, I. L. R., 7 All. 461. [Petheram, C. J., and Straight, Oldfield. Brodhurst, and Mahmood, J. Mar. 7, 1885.]

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

Trespassing on burial or of insulting the religion of any person, or with places, &c.

The knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulting the religion of any person are likely to be wounded, or that the religion of any person is likely to be insulting, the person is likely to be insulting, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

A, B, C, and D, were co-owners of a plot of land in which they were accustomed to bury their dead. A and B opened a sawpit close to the graves of D's relatives, but did not disturb any of the graves. Held that they were wrongly convicted under s. 207 of the Penal Code.—In re Khaja Muhammad Hamin Khan, I. L. R., 3 Mad. 178. [Turner, C.J., and Hutchins, J. April 27, 1881.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Comp.

298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or make any sound in the hearing of that person, or make any gesture in the sight of that person, or make any object in the sight of that person, shall be punished with imprisonment of either description for a term which may

THE Madras High Court has ruled that the interpolation of a forbidden chant is as authorized ritual amounts to an offence under the Penal Code.—NARASIMAH CHARLES

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

Of Offences affecting Life.

REPORT OF THE INDIAN LAW COMMISSIONERS ON OFFENCES AGAINST THE BODY.

THE first class of offences against the body consists of those offences which affect human life; and highest in this first class stand those offences which fall under the definition of voluntary culpable homicide.

v. Shree Krishna Lala Cherya, 2 Mad. Jur. 236.

This important part of the law appears to us to require fuller explanation than almost any other.

The first point to which we wish to call the attention of His Lordship in Council is the expression, "omits what he is leastly bound to do," in the definition of vointing culpable homicide. These words, or other words tantamount in effect, frequently again the Code. We think this the most covenient placefor explaining the reason which

has led us so often to employ them. For, if that reason shall appear to be sufficient in cases in which human life is concerned, it will, a fortiori, be sufficient in other cases.

Barly in the progress of the Code it became necessary for us to consider the following question: When acts are made punishable on the ground that those acts produce, or are intended to produce, or are known to be likely to produce, certain evil effects, to what extent ought omissions which produce, which are intended to produce, or which are known to be likely to produce, the same evil effects, to be made punishable?

Two things we take to be evident: first; that some of these omissions ought to be punished in exactly the same manner in which acts are punished; secondly, that all these omissions ought not to be punished. It will hardly be disputed that a gaoler who voluntarily causes the death of a prisoner by omitting to supply that prisoner with food, or a nurse who voluntarily causes the death of an infant entrusted to her care by omitting to take it out of a tub of water into which it has fallen, ought to be treated as guilty of murder. On the other hand, it will hardly be maintained that a man should be punished as a murderer because he omitted to relieve a beggar, even though there might be the clearest proof that the death of the beggar was the effect of this omission, and that the man who omitted to give the alms knew that the death of the beggar was likely to be the effect of the omission. It will hardly be maintained that a surgeon ought to be treated as a murderer for refusing to go from Calcutta to Meerut to perform an operation, although it should be absolutely certain that this surgeon was the only person in India who could perform it, and that, if it were not performed, the person who required it would die. It is difficult to say whether a Penal Code which should put no omissions on the same footing with acts, or a Penal Code which should put all omissions on the same footing with acts, would produce consequences more absurd and revolting. There is no country in which either of these principles is adopted. Indeed, it is hard to conceive how, if either were adopted, society could be held together.

It is plain, therefore, that a middle course must be taken. But it is not easy to determine what that middle course ought to be. The absurdity of the two extremes is obvious. But there are innumerable intermediate points; and wherever the line of demarcation may be drawn, it will, we fear, include some cases which we might wish to

exempt, and will exempt some which we might wish to include.

Mr. Livingston's Code provides that a person shall be considered as guilty of homieide who omits to save life, which he could save "without personal danger or pecuniary loss." This rule appears to us to be open to serious objection. There may be extreme inconvenience without the smallest personal danger, or the smallest risk of pecuniary loss, as in the case which we lately put of a surgeon summoned from Calcutta to Meerut to perform an operation. He may be offered such a fee that he would be a gainer by going. He may have no ground to apprehend that he should run any greater personal risk by journeying to the Upper Provinces than by continuing to reside in Bengal. But he is about to proceed to Europe immediately, or he expects some members of his family by the next ship, and wishes to be at the Presidency to receive them. He, therefore, refuses to go. Surely, he ought not, for so refusing, to be treated as a murderer. It would be somewhat inconsistent to punish one man for not staying three months in India to save the life of another, and to leave wholly unpunished a man who, enjoying ample wealth, should refuse to disburse an anna to save the life of another. Again, it appears to us that it may be fit to punish a person as a murderer for causing death by omitting an act which cannot be performed without personal danger or pecuniary loss. A parent may be unable to procure food for an infant without money. Yet the parent, if he has the means, is bound to furnish the infant with food; and if, by omitting to do so, . he voluntarily causes its death, he may, with propriety, be treated as a murderer. A nurse hired to attend a person suffering from an infectious disease cannot perform her duty without running some risk of infection. Yet if she deserts the sick person, and thus voluntarily causes his death, we should be disposed to treat her as a murderer.

We pronounce with confidence, therefore, that the line ought not to be drawn where Mr. Livingston has drawn it. But it is with great diffidence that we bring forward our own proposition. It is open to objections: cases may be put in which it will operate too severely, and cases in which it will operate too leniently: but we are unable to devise a better.

What we propose is this, that where acts are made punishable on the ground that they have caused, or have been intended to cause, or have been known to be likely to cause, a certain evil effect, omissions which have caused, which have been intended to cause,

or which have been known to be likely to cause, the same effect, shall be punishable in the same manner; provided that such omissions were, on other grounds, illegal.

An omission is illegal if it be an offence, if it be a breach of some direction of law, or if it be such a wrong as would be a good ground for a civil action.

We cannot defend this rule better than by giving a few illustrations of the way in which it will operate. A omits to give Z food, and by that omission voluntarily causes Z's death. Is this murder? Under our rule it is murder if A was Z's gaoler, directed by the law to furnish Z with food. It is murder if Z was the infant child of A, and had, therefore, a legal right to sustenance, which right a Civil Court would enforce against A. It is murder if Z was a bed-ridden invalid, and A, a nurse, hired to feed Z. It is murder if A was detaining Z in unlawful confinement, and had thus contracted a legal obligation to furnish Z, during the continuance of the confinement, with necessaries. It is not murder if Z is a beggar who has no other claim on A than that of humanity.

A omits to tell Z that a river is swollen so high that Z cannot safely attempt to ford it, and by this omission voluntarily causes Z's death. This is murder, if A is a peon stationed by authority to warn travellers from attempting to ford the river. It is not murder if A is a guide who had contracted to conduct Z. It is not murder if A is a person on whom Z has no other claim than that of humanity.

The savage dog fastens on Z. A omits to call off the dog, knowing that, if the dog be not called off, it is likely that Z will be killed. Z is killed. This is a murder in A, if the dog belonged to A, inasmuch as his omission to take proper order with the dog is illegal. But if A be a mere passer-by, it

is not murder.

We are sensible that, in some of the cases which we have put, our rule may appear too lenient. But we do not think that it can be made more severe without disturbing the whole order of society. It is true that the man, who, having abundance of wealth, suffers a fellow-creature to die of hunger at his feet, is a bad man-a worse man, probably, than many of those for whom we have provided very severe punishment But we are unable to see where, if we make such a man legally punishable, we can draw the line. If the rich man who refuses to save a beggar's life at the cost of a little copper is a murderer, is the poor man just one degree above beggary also to be a murderer if he omits to invite the beggar to partake his hard-earned rice? Again, if the rich man is a murderer

for refusing to save the beggar's life at the cost of a little copper, is he also to be a murderer if he refuses to save the beggar's life at the cost of a thousand rupees? Suppose A to be fully convinced that nothing can save Z's life unless Z leave Bengal, and reside a year at the Cape, is A, however wealthy he may be, to be punished as a murderer, because he will not, at his own expense. send Z to the Cape? Surely not. will be difficult to say on what principle we can punish A for not spending an anna to save Z's life, and leave him unpunished for not spending a thousand rupees to save Z's The distinction between a legal and an illegal omission is perfectly plain and intelligible. But the distinction between a large and a small sum of money is very far from being so; not to say that a sum which is small to one man is large to another.

The same argument holds good in the case of the ford. It is true that none but a very deprayed man would suffer another to be drowned when he might prevent it by a word. But if we punish such a man, where are we How much exertion are we to reto stop? Is a person to be a murderer if he quire? does not go fifty yards through the sun of Bengal at noon in May in order to caution a traveller against a swollen river? Is he to be a murderer if he does not go a hundred yards ?-If he does not go a mile?-if he does not go ten? What is the precise amount of trouble and inconvenience which he is to endure? The distinction between the guide who is bound to conduct the traveller as safely as he can, and mere stranger, is a clear distinction. But the distinction be-tween a stranger who will not give a halloo to save a man's life, and a stranger who will not run a mile to save a man's life, is very

far from being equally clear.

It is, indeed, most highly desirable that men should not merely abstain from doing harm to their neighbours, but should render active services to their neighbours. In general, however, the penal law must content itself with keeping men from doing positive harm, and must leave to public opinion, and to the teachers of morality and religion, the office of furnishing men with motives for doing positive good. It is evident that to attempt to punish men by law for not rendering to others all the service which it is their duty to render to others would be preposterous. We must grant impunity to the vast majority of those omissions which a benevolent morality would pronounce reprehensible, and must content ourselves with punishing such omissions only when they are distinguished from the rest by some

circumstance, which marks them out as peculiarly fit objects of penal legislation. Now, no circumstance appears to us so well fitted to be the mark as the circumstance which we have selected. It will generally be found in the most atrocious cases of omission; it will scarcely ever be found in a venial case of omission; and it is more clear and certain than any other mark that has occurred to us. That there are objections to the line which we propose to draw, we have admitted. But there are objections to every line which can be drawn, and some line must be drawn.

The pext point to which we wish to call the attention of His Lordship in Council is the unqualified use of the words "to cause death" in the definition of voluntary cul-

We long considered whether it would be advisable to except from this definition any description of acts or illegal omissions on the ground that such acts or illegal omissions do not ordinarily cause death, or that. We have they caused death very remotely. determined, however, to leave the clause in its present simple and comprehensive form.

There is undoubtedly a great difference between acts which cause death immediately. and acts which cause death remotely; between acts which are almost certain to cause death, and acts which cause death only under very extraordinary circumstances. But that difference, we conceive, is a matter to be considered by the tribunals when estimating the effect of the evidence in a particular case, not by the legislature in framing the general law. It will require strong evidence to prove that an act of a kind which very seldom causes death, or an act which has caused death very remotely, has actually caused death in a particular case. It will require still stronger evidence to prove that such an act was contemplated by the person who did it as likely to cause death. But, if it be proved by satisfactory evidence that death has been so caused, and has been saused valuntarily, we see no reason for exempting the person who caused it from the punishment of voluntary culpable homicide.

Mr. Livingston, we observe, excepts from the definition of homicide cases in which death is produced by the effect of words on The reathe imagination or the passions. soning of that distinguished jurist has by no means convinced us that the distinction which he makes is well-founded. there are few parts of his Code which appear to us to have been less happily executed then this. His words are these: "The sestruction must be by the act of another. Therefore self-destruction is excluded from

the definition. It must be operated by some act. Therefore, death, although produced by the operation of words on the imagination or the passions, is not homicide. But if words are used which are calculated to produce, and do produce, some act which is the immediate cause of death, it is homicide. A blind man or a stranger in the dark directed by words only to a precipice where he falls and is killed, a direction verbally given to take a drug that it is known will prove fatal, and which has that effect, are instances of this modification of the rule.'

This appears to us altogether incoherent. A verbally directs Z to swallow a poisonous drug. Z swallows it, and dies. And this, says Mr. Livingston, is homicide in A. It certainly ought to be so considered. But how, on Mr. Livingston's principles, it can be so considered, we do not understand. "Homicide," he says, "must be operated by an act." Where, then, is the act in this case? Is it the speaking of A? Clearly not, for Mr. Livingston lays down the doctrine that speaking is not an act. Is it the swallowing by Z? Clearly not, for the destruction. of life, according to Mr. Livingston, is not homicide unless it be by the act of another. and this swallowing is an act performed by Z himself.

The reasonable course, in our opinion, is to consider speaking as an act, and to treat A as guilty of voluntary culpable homicide, if, by speaking, he has voluntarily caused Z's death, whether his words operated circuitously by inducing Z to swallow poison, or directly by throwing Z into convulsions.

There will, indeed, be few homicides of this latter sort. It appears to us that a conviction, or even a trial, in such a case, would be an event of extremely rare occurrence. There would probably not be one such trial in a century. It would be most difficult to prove to the conviction of any Court that that death had really been the effect of excitement produced by words. It would be still more difficult to prove that the person who spoke the words anticipated from them an effect which, except under very peculiar circumstances, and on very peculiar constitutions, no words would produce. Still it seems to us that both these points might be made out by overwhelming evidence; and, supposing them to be so made out, we are unable to perceive any distinction between the case of him who voluntarily causes death in this manner, and the case of him who voluntarily causes death by means of a pistol' or a sword. Suppose it to be proved to the entire conviction of a Criminal Court that Z, the deceased, was in a very critical state of

health; that A, the heir to Z's property, had been informed by Z's physicians that Z's recovery absolutely depended on his being kept quiet in mind, and that the smallest mental excitement would endanger his life; that A immediately broke into Z's sick room, and told him a dreadful piece of intelligence, which was a pure invention; that Z went into fits, and died on the spot; that A had afterwards boasted of having cleared the way for himself to a good property by this artifice. These things being fully proved, no Judge could doubt that A had voluntarily caused the death of Z; nor do we perceive any reason for not punishing A in the same manner in which he would have been punished if he had mixed arsenic in Z's medicine.

Again, Mr. Livingston excepts from the definition of homicide the case of a person who dies of a slight wound which, from neglect, or from the application of improper remedies, has proved mortal. We see no reason for excepting such cases from the simple general rule which we propose. It will, indeed, be in general more difficult to prove that death has been caused by a scratch than by a stab which has reached the heart; and it will, in a still greater degree, be more difficult to prove that a scratch was intended to cause death, than that a stab was intended to cause death. Yet both these points might be fully established. Suppose such a case as the following: It is proved that A inflicted a slight wound on Z, a child who stood between him and a large property. It is proved that the ignorant and superstitious servants about Z applied the most absurd remedies to the wound. It is proved that, under their treatment, the wound mortified, and the child died. Letters from A to a confidant are produced. In those letters, A congratulates himself on his skill, remarks that he could not have inflicted a more severe wound without exposing himself to be punished as a murderer, relates with exultation the mode of treatment followed by the people who have charge of Z, and boasts that he always foresaw that they would turn the slightest incision into a mortal wound. It appears to us that, if such evidence were produced, A ought to be punished as a murderer.

Again, suppose that A makes a deliberate attempt to commit assassination. In the presence of numbers, he aims a knife at the heart of Z. But the knife glances aside and inflicts only a slight wound. This happened in the case of Jean Chatel, of Damien, of Guiscard, and of many other assassins of the most desperate character. In such cases, there is no doubt whatever as to the intention. Suppose that the person who received

the wound is under the necessity of exposing himself to a moist atmosphere immediately afterwards, and that, in consequence he is attacked with tetanus, and diet. Her again, however slight the wound may have been, we are unable to perceive any goo reason for not punishing A as a murderer.

We will only add that this prevision of the Code of Louisiana appears to us peculiar ill-suited to a country in which, we have reason to fear, neglect and bad treatment are far more common than good medical treatment.

The general rule, therefore, which we propose is, that the question, whether a personal has, by an act or illegal omission, voluntaricaused death, shall be left a question of evidence to be decided by the Courts according to the circumstances of every case.

We propose that all voluntary culpable homicide shall be designated as murder unless it fall under one of three heads. We are desirous to call the particular attention of His Lordship in Council to the law respecting the three mitigated forms of voluntary culpable homicide; and first to the law of manslaughter.

We agree with the great mass of mankin and with the majority of jurists, ancient as modern, in thinking that horsicide committe in the sudden heat of passion, on great er vocation, ought to be punished, but that, general, it ought not to be punished to verely as murder. It ought to be punished in order to teach men to entertain a parali respect for human life; it ought to be purished in order to give men a motive for a customing themselves to govern their pasion; and in some few cases, for which we have a made provisions, we conceive that it oug to be punished with the utmost rigour.

In general, however, we would not vishomicide committed in violent passion which had been suddenly provoked with the higher penalties of the law. We think that to treat person guilty of such homicide as we shout treat a murderer would be a highly interpedient course—a course which would shot the universal feeling of mankind, and work engage the public sympathy on the side the delinquent against the law.

His Lordship in Council will remark of important distinction between the laws whave framed it, and some other systems.

Neither the English law, nor the Pres Code, extends any indulgence to house which is the effect of anger excited by wer alone. Mr. Livingston goes still furthe "No words whatever," says the Chair Louisiana, "are an adequate cause, no ge tures merely showing derision or coutern

no assault or battery so slight as to show that the intent was not to inflict great bodily harm."

We greatly doubt whether any good reason can be assigned for this distinction. an indisputable fact that gross insults by words or gesture have as great tendency to move many persons to violent passion, as dangerous or painful bodily injuries. Nor does it appear to us that passion excited by insult is entitled to less indulgence than passion excited by pain. On the contrary, the circumstance that a man resents an insult more than a wound is anything but a proof that he is a man of a peculiarly bad heart. It would be a fortunate thing for mankind if every person felt an outrage which left a stain upon his honour more acutely than an outrage which had fractured one of his limbs. If so, why should we treat an offence produced by the blameable excess of a feeling, which all wise legislators desire to encourage, more severely than we treat the blameable excess of feelings certainly not more respectable?

One outrage which wounds only the honour and the affections is admitted by Mr. Livingston to be an adequate provocation: "A discovery of the wife of the accused, in the act of adultery with the person killed, is an adequate cause." The law of France, the law of England, and the Mahomedan law are also indulgent to homicide committed under such circumstances. We must own that we can see no reason for making a distinction between this provocation and many other provocations of the same kind. We cannot consent to lay it down as an universal rule that, in all cases, this provocation shall be considered as an adequate provocation. Circumstances may easily, be conceived which would satisfy a Court that a husband had, in such a case, acted from no feeling of wounded honour or affection, but from mere brutality of nature, or from disappointed cupidity. On the other hand, we conceive that there are many cases in which as much indulgence is due to the excited feelings of a father or a brother as to those of a husband. That a worthless, unfaithful, and tyrannical husband should be guilty only of manslaughter for killing the paramour of his wife, and that an affectionate and high-spirited brother should be guilty of murder for killing in a paroxysm of rage the seducer of his sister, appears to us inconsistent and unreasonable.

There is another class of provocations which Mr. Livingston does not allow to be adequate in law, but which have been, and, while human nature remains unaltered, will be, adequate in fact to produce the most

tremendous effects. Suppose a person to take indecent liberties with a modest female in the presence of her father, her brother, her husband, or her lover. Such an assault might have no tendency to cause pain or danger; yet history tells us what effects have followed from such assaults. Such an assault produced the Sicilian Vespers. Such an assault called forth the memorable blow of Wat Tyler. It is difficult to conceive any class of cases in which the intemperance of anger ought to be treated with greater lenity. So far, indeed, should we be from ranking a man who acted like Tyler with murderers that we conceive that a Judge would exercise a sound discretion in sentencing such a man to the lowest punishment fixed by the law for manslaughter.

We think it right to add that, though in our remarks on this part of the law we have used illustrations drawn from the history and manners of Europe, the arguments which we have employed apply as strongly to the state of society in India as to the state of society in any part of the globe. There is, perhaps, no country in which more cruel suffering is inflicted, and more deadly resentment called forth, by injuries which affect only the mental feelings.

A person, who should offer a gross insult to the Mahomedan religion in the presence of a zealous professor of that religion, who should deprive some high-born Rajpoot of his caste, who should rudely thrust his head into the covered palanquin of a woman of rank, would probably move those whom he insulted to more violent anger than if he had caused them some severe bodily hurt. on these subjects our notions and usages differ from theirs is nothing to the purpose. We are legislating for them, and though we may wish that their opinions and feelings may undergo a considerable change, it is our duty, while their opinions and feelings remain unchanged, to pay as much respect to those opinions and feelings as if we partook of them. We are legislating for a country where many men, and those by no means the worst men, prefer death to the loss of caste; where many women, and those by no means the worst women, would considenthemselves as dishonoured by exposure to the gaze of strangers; and to legislate for such a country as if the loss of caste, or the exposure of a female face, were not provocations of the highest order, would, in our opinion, be unjust and unreasonable.

The second mitigated form of voluntary culpable homicide is that to which we have given the name of voluntary culpable homicide by consent. It appears to us that this

description of homicide ought to be punished, but that it ought not to be punished so severely as murder. We have elsewhere given our reasons for thinking that this description of homicide ought to be punished.

Our reasons for not punishing it so severely as murder are these: In the first place, the motives which prompt men to the commission of this offence are generally far more respectable than those which prompt men to the commission of murder. Sometimes it is the effect of a strong sense of religious duty, sometimes of a strong sense of honour, not unfrequently of humanity. The soldier who, at the entreaty of a wounded comrade, puts that comrade out of pain, the friend who supplies laudanum to a person suffering the torment of a lingering disease, the freedman who in ancient times held out the sword that his master might fall on it, the high-born native of India who stabs the females of his family at their own entreaty in order to save them from the licentiousness of a band of marauders, would, except in Christian societies, scarcely be thought culpable, and even in Christian societies would not be regarded by the public, and ought not to be treated by the law, as assassins.

Again, this crime is by no means productive of so much evil to the community as murder. One evil ingredient of the utmost importance is altogether wanting to the offence of voluntary culpable homicide by con sent. It does not produce general insecurity. It does not spread terror through society. When we punish murder with such signal severity, we have two ends in view : One end is · that people may not be murdered. Another end is that people may not live in constant dread of being murdered. This second end is perhaps the more important of the two. For, if assassination were left unpunished the number of persons assassinated would probably bear a very small proportion to the whole population. But the life of every human being would be passed in constant anxiety and alarm. This property of the offence of murder is not found in the offence of voluntary culpable homicide by consent. Every man who has not given his consent to be put to death is perfectly certain that this latter offence cannot at present be committed on him, and that it never will be committed, unless he shall first be convinced that it is his interest to consent to it. We know that two or three midnight assassinations are sufficient to keep a city of a million of inhabitants in a state of consternation during several weeks, and to cause every private family to lay in arms and watchmen's rattles. No number of suicides,

or of homicides committed with the unextorted consent of the person killed, could possibly produce such alarm among the survivors.

The distinction between murder and voluntary culpable homicide by consent has never, as far as we are aware, been recognized by any Code in the distinct manner in which we propose to recognize it. But it may be traced in the laws of many countries, and often, when neglected by those who have framed the laws, it has had a great effect on the decisions of the tribunals, and particularly on the decisions of tribunals popularly composed. It may be proper to observe that the burning of a Hindu widow by her own consent, though it is now, as it ought to be, an offence by the Regulations of every Presidency, is in no Presidency punished as murder.

CULPABLE HOMICIDE AND ABORTION.

The third mitigated form of voluntary culpable homicide is that which we have designated as voluntary culpable homicide in defence.

We have been forced to leave the law on the subject of private defence, as we have elsewhere said, in an unsatisfactory state; and, though we hope and believe that it may be greatly improved, we fear that it must always continue to be one of the least precise parts of every system of jurisprudence. That portion of the law of homicide which we are now considering is closely connected with the law of private defence, and must necessarily partake of the imperfections of the law of private defence. But wherever the limits of the right of private defence may be placed. and with whatever degree of accuracy they may be marked, we are inclined to think that it will always be expedient to make a separation between murder and what we have designated as voluntary culpable homicide in detence.

The chief reason for making this separation is that the law itself invites men to the very verge of the crime which we have designated as voluntary culpable homicide in defence. It prohibits such homicide indeed. But it authorizes acts which lie very near to such homicide. And this circumstance, we think, greatly mitigates the guilt of such homicide.

That a man who deliberately kills another in order to prevent that other from pulling his nose should be allowed to go absolutely unpunished would be most dangerous. The law punishes and ought to punish such killing. But we cannot think that the law eight to punish such killing as murder. For the law

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itself has encouraged the slayer to inflict on the assailant any harm short of death which may be necessary for the purpose of repelling the outrage—to give the assailant a cut with a knife across the fingers which may render his right hand useless to him for life, or to hurl him downstairs with such force as to break his leg. And it seems difficult to conceive that circumstances which would be a full justification of any violence short of homicide should not be a mitigation of the guilt of homicide. That a man should be merely exercising a right by fracturing the skull and knocking out the eye of an assailant, and should be guilty of the highest crime in the Code if he kills the assailant-that there should be only a single step between perfect innocence and murder, between perfect impunity and liability to capital punishmentseems unreasonable. In a case in which the law itself empowers an individual to inflict any harm short of death, it ought hardly, we think, to visit him with the highest punishment if he inflicts death.

It is to be considered also that the line between those aggressions which it is lawful to repel by killing, and those which it is not lawful so to repel, is in our Code, and must be in every Code; to a great extent, an arbitrary line, and that many individual cases will fall on one side of that line which, if we had framed the law with a view to those cases alone, we should place on the other. we allow a man to kill if he has no other means of preventing an incendiary from burning a house; and we do not allow him to kill for the purpose of preventing the commission of a simple theit. But a house may be a wretched heap of mats and thatch, propped by a few bamboos, and not worth altogether twenty rupees. A simple theft may deprive a man of a pocket book which contains bills to a great amount, the savings of a long and laborious life, the sole dependence of a large That in these cases the man who kills the incendiary should be pronounced guiltless of any offence, and that the man who kills the thief should be sentenced to the gallows, or, if he is treated with the utmost lenity which the Courts can show, to perpetual transportation or imprisonment, would be generally condemned as a shocking injustice. We are, therefore, clearly of opinion that the offence which we have designated as veluntary culpable homicide in defence ought to be distinguished from murder in such a manner that the Courts may have it in their power to inflict a slight or a merely nominal punishment on acts which, though not within the letter of the law which authorizes killing in self-defence, are yet within the reason of that law.

We have hitherto been considering the law of voluntary culpable homicide. But homicide may be culpable yet not voluntary. There will probably be little difference of opinion as to the expediency of providing a punishment for the rash and negligent causing of death. But it may be thought that we have dealt too leniently by the offender who, while committing a crimp, causes death which he did not intend to cause, or know himself to be likely to cause.

The law as we have framed it differs widely from the English law. "If," says Sir William Blackstone, "one intends to do another felony, and undesignedly kills a man, this is murder;" and he gives the following illustration of the rule: "If one gives a woman with child a medicine to produce abortion, and it operates so violently as to kill the woman, this is murder in the person who gave it."

Under the provisions of our Code, this case would be very differently dealt with according to circumstances. If A kills Z by administering abortives to her with the knowledge that those abortives are likely to cause her death, he is guilty of voluntary culpable homicide, which will be voluntary culpable homicide by consent if Z agreed to run the risk, and murder, if Z did not so agree. A causes miscarriage to Z, not intending to cause Z's death, not thinking it likely that he shall cause Z's death, but so rashly or negligently as to cause her death, A is guilty of culpable homicide not voluntary, and will be liable to the punishment provided for the causing of miscarriage, increased . by imprisonment for a term not exceeding two years. Lastly, if A took such precautions that there was no reasonable probability that Z's death would be caused, and if the medicine were rendered deadly by some accident which no human sagacity could have foreseen, or by some peculiarity in Z's constitution, such as there was no ground whatever to expect, A will be liable to no punishment whatever on account of her death, but will, of course, be liable to the punishment provided for causing miscarriage. •

It may be proper for us to offer some arguments in defence of this part of the Code.

It will be admitted that, when an act is in itself innocent, to punish the person who does it, because bad consequences which no human wisdom could have foreseen have followed from it, would be in the highest degree barbarous and absurd.

A pilot is navigating the Hooghly with the utmost care and skill: he directs the vessel

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against a sandbank which has been recently formed, and of which the existence was altogether unknown till this disaster. Several of his passengers are consequently drowned. To hang the pilot as a murderer on account of this misfortune would be universally allowed to be an act of atrocious injustice. But, if the voyage of the pilot be itself a high offence, ought that circumstance alone to turn his misfortune into a murder? Suppose that he is engaged in conveying an offender be-yond the reach of justice, that he has kidnapped some natives, and is carrying them to a ship which is to convey them to some foreign slave-colony, that he is violating the laws of quarantine at a time when it is of the highest importance that those laws should be strictly observed, that he is carrying supplies, deserters, and intelligence to the enemies of The offence of such a pilot ought, the State. undoubtedly, to be severely punished. But to pronounce him guilty of one offence, because a misfortune befel him while he was committing another offence—to pronounce him the murderer of people whose lives he never meant to endanger, whom he was doing his best to carry safe to their destination, and whose death has been purely accidental-is surely to confound all the boundaries of

Again, A heaps fuel on a fire, not in an imprudent manner, but in such a manner that the chance of harm is not work considering. Unhappily the flame bursts out more violently than there was reason to expect. At the same moment a sudden puff of wind blows Z's light dress towards the hearth. The dress · catches fire, and Z is burned to death. punish A as a murderer on account of such an unhappy event would be senseless cruelty. But suppose that the fuel which caused the flame to burst forth was a will, which A was fraudulently destroying. Ought this circumstance to make A the murderer of Z? think not. For the fraudulent destroying of wills, we have provided in other parts of the Code punishments which we think sufficient. If not sufficient, they ought to be made so. But we cannot admit that Z's death has, in the smallest_degree, aggravated A's offence, or ought to be considered in apportioning A's punishment.

To punish as a murderer every man who, while committing a heinous offence, causes death by pure misadventure, is a course which evidently adds nothing to the secutity of human life. No man can so conduct himself as to make it absolutely certain that he shall not be so unfortunate as to cause the death of a fellow-creature. The utmost that he can do is to abstain from

every thing which is at all likely to cause death. No fear of punishment can make him do more than this, and therefore to punish a man who has done this can add nothing to the security of human life. The only good effect which such punishment can produce will be to deter people from committing any of those offences which turn into murders what are in themselves mere accidents. It is, in fact, an addition to the punishment of those offences, and it is an addition made in the very worst way. For example, hundreds of persons in some great cities are in the habit of picking pockets. They know that they are guilty of a great offence. But it has hever occurred to one of them, nor would it occur to any rational man, that they are guilty of an offence which endangers life. Unhappily one of these hundreds attempts to take the purse of a gentleman who has a loaded pistol in his pocket. The thief touches the trigger : the pistol goes off : the gentleman is shot dead. To treat the case of this pickpocket differently from that of the numerous pick-pockets who steal under exactly the same circumstances, with exactly the same intentions, with no less risk of causing death, with no greater care to avoid causing death -to send them to the house of correction as thieves, and him to the gallows as a murderer -appears to us an unreasonable course. If the punishment for stealing from the person be too light, let it be increased, and let the increase fall alike on all the offenders. Surely the worst mode of increasing the punishment of an offence is to provide that, besides the ordinary punishment, every offender shall run an exceedingly small risk of being hanged. The more nearly the amount of punishment can be reduced to a certainty the bet-But, if chance is to be admitted, there are better ways of admitting it. It would be a less capricious, and therefore a more salutary, course to provide that every fiftieth or every hundredth thief selected by lot should be hanged, than to provide that every thief should be hanged who, while engaged in stealing, should meet with an unforeseen misfortune such as might have befallen the most virtuous man while performing the most virtuous action.

We trust that His Lordship in Council will think that we have judged correctly in proposing that, when a person engaged in the commission of an offence causes death by pure accident, he shall suffer only the punishment of his offence without any addition on account of such accidental death.

When a person engaged in the commission of an offence causes death by rashness or negligence, but without either intending to cause

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death, or thinking it likely that he shall cause death, we propose that he shall be liable to the punishment of the offence which he was engaged in committing superadded to the ordinary punishment of involuntary culpable homicide.

The arguments and illustrations which we have employed for the purpose of showing that the involuntary causing of death without either rashness or negligence ought, under no circumstances to be punished at all, will, with some modifications which will readily suggest themselves, serve to show that the involuntary causing of death by rashness or negligence, though always punishable, ought, under no circumstances, to be punished as murder.

It gives us great pleasure to observe that Mr. Livingston's provisions on this subject, thoughin details they differ widely from ours, are framed on the principles which we have here defended.

We wish next to call the attention of His Lordship in Council to clauses 308 and 309. These clauses appear to us absolutely ne-

These clauses appear to us absolutely necessary to the completeness of the Code. We have movided, under the head of bodily hurt, for cases in which hurs is inflicted in an attempt to murder; under the head of assaults, forassaults committed in attempting to murder; under the head of criminal trespass, for some criminal trespasses committed in order to murder. But there will still remain many atrocious and deliberate attempts to murder which are not trespasses, which are not assaults, and which cause no hurt. A, for example, digs a pit in his garden, and conceals the mouth of it, intending that Z may fall in and perish there. Here A has committed no trespass, for the ground is his own; and no .assault, for he has applied no force to Z. He may not have caused bodily hurt, for Z may have received a timely caution, or may not

have gone near the pit. But A's crime is evi-

deatly one which ought to be punished as se-

intention of cutting his throat.

verely as if he had laid hands on Z with the

Again, A sets poisoned food before Z. Here A may have committed no trespass, for the food may be his own; and, if so, he violates no right of property by mixing arsenic with it. He commits no assault, for he means the taking of the food to be Z's voluntary act. If Z does not swallow enough of the poisoned food to disorder him, A causes no bodily hurt. Yet it is plain that A has been guilty of a crime of a most atrocious description.

Similar attempts may be made to commit voluntary culpable homicide in any of the three mitigated forms. A, for example, is excited to violent passion by Z, and fires a pistol intending to kill Z. If the shot proves fatal, A will be guilty of manslaughter; and he surely ought not to be exempted from all punishment if the ball only grazes the intended victim.

It is to meet cases of this description that clauses 308 and 309 are intended.

With respect to the law on the subject of abortion, we think it necessary to say only that we entertain strong apprehensions that this or any other law on that subject may, in this country, be abused to the vilest purpos-The charge of abortion is one which, even where it is not substantiated, often leaves a stain on the honour of families. The power of bringing a false accusation of this description is, therefore, a formidable engine in the hands of unprincipled men. part of the law will, unless great care may be taken, produce few convictions, but much misery and terror to respectable families, and a large harvest of profit to the vilest pests of society. We trust that it may be in our power in the Code of Procedure to lay down rules which may prevent such an abuse. Should we not be able to do so, we are inclined to think that it would be our duty to advise His Lordship in Council rather to suffer abortion, where the mother is a party to the offence, to remain wholly unpunished, than to repress it by provisions which would occasion more suffering to the innocent than to the guilty.

299. Wheever causes death by doing an act with the intention of causing death, of with the intention of causing such bodily injury as is likely to cause death, with the knowledge that he is likely by such act to cause death, commits the offence of cuipable homicide.

Illustrations.

(a.) A lays sticks and turf over a pit, with the intention of thereby causing death, or (with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in, and is killed. A has committed the offence of culpable homicide.

knowing it to be likely to cause, Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

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vior heed Rec, Indian Sept 16/97 Sisturginal bet hunder & C.H. SEC. 300.] OFFENCES AFFECTING THE HUMAN BODY. (c.) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing as unlawful act, he was not guilty of culpable homicide, as he did not intend to kill Br or to cause death by doing an act that he knew was likely to cause death. Explanation 1.—A person who causes bodily injury to another, who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates

the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

877 1 300. Except in the cases hereinafter excepted, culpable homicide is murglad der, if the act by which the death is caused is done Murder. with the intention of causing death, or-

andly if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

'ardly if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary

course of nature, to cause death, or-

4thly) if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

- (a.) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.
- (b.) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not, in the ordinary course of nature, kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury, as, in the ordinary course of nature, would cause death.
- (c.) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.
- (d.) A, without any excuse, fires a loaded cannon into a crowd of persons, and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sud-When culpable homicide is not murder. den provocation, causes the death of the person who gave the proyocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

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* First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations.

- (a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the rhild, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.
- (b.) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.
- (c.) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.
- (d.) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.
- (a) A attempts to pull Z's nose. Z, in the exercise of the right of private deferice, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.
- (f.) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's 520 hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property. Exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Zattempts to horse-whip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horse-whipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due of discharge of his duty as such public servant, and without ill will towards the person whose death is caused.

premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and ratiout the offender's having taken undue advantage, or acted in a cruel or unusual manner.

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Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Curefice Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death, with his own consent.

Illustration.

A, by instigation, voluntarily causes Z, a person under eighteen; cars of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death. A has therefore abetted murder.

Ruling.

In a case in which it was found that all the accused were guilty of rioting armed with deadly weapons, that the fight was premeditated and pre-arranged, a regular pitched battle or trial of strength between the two parties concerned in the riot, and that one of the accused, in the course of the riot and in prosecution of the common object of the assembly, killed, or attempted to kill, a man under such circumstances that his act amounted to an attempt to murder, the question arose whether that act could be said to bear a less grave character by reason of excep. 5 to s. 300 of the Penal Code. Per Curiam.—Held that upon such finding the case did not fall within the exception. Per Pigot, J. (Petheram, C.J., and Macpherson, J., concurring).—The 5th exception to s. 300 should receive a strict and not a liberal construction; and in applying the exception, it should be considered with reference to the act consented to or authorized, and next with reference to the person or persons authorized, and as to each of those some degree of particularity at least should appear upon the facts proved before the exception can be said to apply. Shamshere Khan v. Empress (I. L. R., 6 Cal. 154) and Queen v. Kukier Mather (unreported) dissented from, so far as they decide that from such a finding as the above consent to take the risk of death is inferred. Per O'Kimaly. J.—Before excep. 5 can be applied, it must be found that the person killed, with a full knowledge of the facts, determined to suffer death, or take the risk of death; and that this determination continued up to, and existed at, the moment of his death. Queen v.

Kukier Mather (unreported) observed on. Per Ghose, J.—No general rule of law can be laid down in determining in cases of this description whether the person killed or wounded suffered death, or took the risk of death, with his own consent, it being a question of fact, and not of law, to be decided upon the circumstances of each case as it arises. Shamshere Khan v. Empress (I. L. R., 6 Cal. 154) and Queen v. Kukier Mather (unreported) observed on, and the propositions of law laid down therein concurred with.—Queen-Empress v. Nayamuddin, I. L. R., 18 Cal. 484. [Petheram, C.J., and Pigot,

O'Kinealy, Macpherson, and Ghose, JJ. May 19, 1891.]

801. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing death of person other than person whose death was intended.

Culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the

offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Punishment for murder.

7. 802. Whoever commits murder shall be punished with death or transportation for life, and shall also be liable to fine.

CHARGE.—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence parishable under s. 302 of the Indian Penal Code, and within the cognizance of the Court of Saising [or High Court].—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXVIII. (II).

EVERY person, whether within or without the Presidency towns, aware of the commission of, or of the intention of any other person to commit, any offence punished under s. 302 of the Penal Code, shall forthwith give information to the nearest Markitake or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

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and could be easily arrested. Open of Shorts him dead on

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* Is the act by which death is caused does not in itself constitute the crime of murder, it does not constitute murder, because it is coupled with dacoity.—QUEEN v. RAMCHUNDER CHUNG, 1 Ind. Jur., O. S., 108. [Steer, Seton-Karr, and Jackson, JJ. Nov. 17, 1862.]

WHERE the intention of causing death was not sufficiently established, a sentence of death was commuted to transportation for life.—QUEEN v. SHOBHA SHEIKH GORMAN, W. R., Sp., 2. [Loch and Steer, J]. Jan. 27, 1864.]

THERE can be no conviction for abetment of murder without proof of murder.—QUEEN ASKUR, W. R, Sp., 12. [Steer and Seton-Karr, JJ. Feb. 22, 1864.]

In a case of murder committed in a drunken squabble, it was held that voluntary drunkenness, though it did not palliate any offence, may be taken into account as throwing light upon the question of intention.—Queen v. Ram Sahoy Bhur, W. R., Sp., 24. [Steer and Glover, JJ. April 29, 1864.]

S. 380 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with ss. 306 and 367 of the new Code of Criminal Procedure (Act X. of 1882), does not authorize a Sessions Judge to sentence a prisoner convicted of murder to anything less than transportation for life, but only requires the Judge, if he sentence such prisoner to transportation for life instead of capitally, to assign his reasons for so doing. If there are circumstances which render expedient or advisable a mitigation of the sentence required by the law to be passed in such cases, the Judge may record those circumstances, and submit them for the consideration of the Government, and the Government may, under s. 54 of Act XXV. of 1861 (corresponding with s. 401 of Act X. of 1882), act as to it seems proper.—Queen v. Dabee, W. R., Sp., 27. [Loch and Glover, J]. May 2, 1864.]

If a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 396 of the Penal Code, but he cannot be separately convicted of murder under s. 302, and of committing dacoity under s. 395. Where the law gives the alternative punishments of death, transportation for life, and rigorous imprisonment extending to ten years, a sentence of fourteen years' transportation is illegal. If the Jadge thinks it proper to pass a sentence of transportation short of life, he should pass a sentence of imprisonment for the term fixed by law, and then, under s. 59, change it to transportation for that period.—Queen v. Rughoo, W. R., Sp., 30. [Loch and Jackson, JJ. May 3, 1864.]

In order to convict a person of murder arising out of grievous hurt, it is indispensable that the death should be clearly and directly connected with the act of violence.—QUEEN MAHOMED HOSSEIN, W. R., Sp., 31. [Seton-Karr and Glover, JJ. May 12, 1864.]

A CONVICTION for murder was held to be wrong in a case where a prisoner, taking advantage of an incident which occurred in what till then had been a fair fight, struck his opponent, and knocked him over.—Queen v. Kewul Dosad, W. R., Sp., 36. [Seton-Karr and Campbell, JJ. June 19, 1864.]

COURSE to be pursued by Sessions Judges in the case of apparently insane persons charged with murder. [See the procedure prescribed in s. 465 et seq. of Act X. of 1882.—Ed.]—QUEEN v. SHEIKH MUSTAFA, I W. R. I. [Loch and Seton-Karr, J]. Aug. 1, 1864.]

A MAN and a dog died a few hours after eating the same food, but no traces of poison were found in their bodies or in the possession of the accused. The mode of investigation by the police and by the Magistrates in such cases fully laid down.—In the Matter of Chuttoo Chamar, I W. R. 3. [Campbell and Glover, JJ. Aug. 9, 1864.]

The prisoner was convicted of murder by the Sessions Judge, and sentenced to death subject to confirmation by the High Court. The High Court directed the Sessions Judge to take any evidence that might be forthcoming to prove the alleged confession before the Magistrate, which, as recorded, was inadmissible, not being taken as prescribed in s. 205 of the Criminal Procedure Code (A&XXV. of 1861), corresponding with s. 364 of the new Code of Criminal Procedure (Act X. of 1882), and to certify the result of such inquiry and evidence to the Court. Evidence of the confession having been taken by the Sessions Judge, and certified as directed, the High Court confirmed the conviction and the sentence of death.—Res. v. Ganu Bapu, 2 Bom. H. C. R. 398. [Arnould, Acting C.]., and Newton and Janardan, J. Aug. 18, 1864.]

THE two prisoners having confessed that, having caught the deceased in the act of having sexual intercourse with the wife of one of them, they then and there killed him, held that the very grave provocation given to them was such as to reduce their crime from

murder to culpable homicide not amounting to murder.—QUEEN v. GOUR CHUNDAR POLIE, 1 W. R. 17. [Kemp and Glover, JJ. Sep. 26, 1864.]

An unpremeditated assault (ending in an affray in which death is caused), committed in the heat of passion, upon a sudden quarrel, it being immaterial which parts offered the provocation or committed the first assault, was held to come within excep. 4 of s. 300 of the Penal Code.—Queen v. Zalim Rai, i W. R. 33. [Kemp and Glover, JJ. Nov. 25, 1864.]

A JUDGE can alter or amend a charge at any stage of the trial. The subject of an Independent State, though not amenable to the British Courts on a charge of culpable homicide committed out of British territories, may be so amenable on a charge of kidaapping from those territories.—QUEEN v. DHURMONARAIN MOITRO, I W. R. 39. [Kemp and Glover,]]. Dec. 9, 1864.]

In a case of murder, after the finding and discharge of the assessors, the Judge altered the charge to culpable homicide not amounting to murder, and convicted the accused on that charge. Held that the conviction was illegal.—Queen v. Dyer Bhola, i W. R. 40. [Kemp and Glover, J]. Dec. 9, 1864.]

A CAPITAL sentence mitigated in the case of murder committed while under the influence of provocation caused by an intrigue with the wife of the prisoner.—QUEEN v. BHEKYE alias SHEIK ANSER, I W. R. 46. [Kemp and Glover, J]. Dec. 19, 1864.]

Though the evidence was held to be sufficient to convict the accused of murder, yet, as the evidence gave rise to doubts as to the precise part taken by the prisoner, it was thought safer to remit the capital sentence, and pass one of transportation for life.—Queen v. Baboo Lall Jhah, I W. R. 48. [Kemp and Glover, JJ. Dec. 26, 1864.]

When two persons take an active part in a murder, they become principals in the first degree, though one of them only may have been the actual killer. If one stood by whilst the crime was being committed, he would be an abettor.—QUEEN v. JAN MAHONER, 1 W. R. 49. [Kemp and Glover, JJ. Dec. 26, 1864.]

THE conviction of a police-inspector for having abetted the bringing of a false charge of murder was quashed, because it was not distinctly shown that he preferred the charge mald fide.—QUEEN v. MUTHOORAPERSHAD PANDAY, 2 W. R. 10. [Kemp and Glover, J]. Jan. 18, 1865.]

The prisoner was convicted of murder, and sentenced to death. But, before confirming the sentence, as doubts were entertained of her sanity, the case was referred to the Sessions Judge with instructions for further inquiry.—QUEEN v. ARZAO BEBEE, 2 W. R. 33. [Kemp and Glover, JJ. Feb. 4, 1865.]

WHEN murder is committed in the commission of a dacoity, every one of the persons concerned in the dacoity is liable to be punished with death.—QUEEN T. RUCHER AHEN, 2 W. R. 39. [Kemp and Glover, J]. . Mar. 6, 1865.]

THE case of a prisoner who, after having committed dacoity attended with marder, absconded to Bhootan. On the annexation of the Bhootan Dooars by the British Government, he was arrested, and, after conviction, was sentenced to transportation for life.—Queen v. Roopa, 2 W. R. 49. [Glover, J. Mar. 21, 1865.]

DISCUSSION as to the sufficiency of the evidence in a case of murder, and the necessity of applying to Government for a pardon on behalf of the prisoner.—QUEEN v. GOVIND BAGDER, 3 W. R. 1. [Jackson and Glover, JJ. April 24, 1865.]

CASE of conviction of murder on the confession of the accused, together with evidence as to his conduct both before and after the murder.—QUEEN v. PETER RAM TRAPPA, 3 W. R. II. [Jackson and Glover, J]. May 11, 1865.]

What is necessary to bring a case of murder under the 4th exception to s. 300 of the Penal Code, so as to change the offence into culpable homicide not amounting to muster.

—QUEEN v. AKAL MAHOMED, 3 W. R. 18. [Jackson and Glover, J]. May 23, 1865.

A 1s guilty of murder if he several times kicks B, who, after having been severity beaten, has fallen down senseless; as A must have known that such kicks were likely to cause death in B's state at that time.—Queen v. Nilmadhub Sircar, 3 W. R. 22. [juckson and Glover, JJ. June 2, 1865.]

PRISONER acquitted of attempt to murder, but directed to be proceeded with bythe Magistrate under s. 297 of the Code of Criminal Procedure (Act XXV. of 1861), core-

spinding with u. 120 of the new Code of Criminal Procedure (Act X. of 1882), with a view to security being taken for his peaceable future behaviour.—QUEEN v. BEHAREE alias KURREEN BUX, 3 W. R. 23. [Jackson and Glover, JJ. June 3, 1865.]

SERTENCE of transportation for life in a case of murder instead of capital punishment, there being some reason to suppose that, at the time of the murder, both the decased and the prisoner were drunk, and that the murdered man excited the prisoner's passion by calling him a thief.—QUEEN v. RAM NATH GWALA, 3 W.R. 27. [Campbell, Jackson, and Gloves, J. June 11, 1865.]

The Sessions Judge, having found the prisoners guilty of striking the deceased with the knowledge that the act was likely to cause death—in other words, guilty of murder—convicted and punished them for culpable homicide not amounting to murder. Case remanded for a new trial (Jackson, J., dissenting).—QUEEN v. BERIA BAYIKUR, 3 W. R. 38. [Kemp, Jackson, and Glover, J]. July 6, 1865.]

THE absence of premeditation will not reduce the crime from murder to culpable homicide not amounting to murder.—QUEEN v. MAHOMED ELIM, 3 W. R. 40. [Kemp and Glover, JJ. July 7, 1865.]

WHEN prisoners confess in the most circumstantial manner to having committed a munder, the finding of the body is not absolutely essential to a conviction.—QUEEN v. PETTA GAZI, 4 W. R. 19. [Glover, J. Oct. 26, 1865.]

THE offences of murder and of culpable homicide not amounting to murder, each supposes an intention or knowledge of likelihood of the causing death. In the absence of such intention or knowledge, the offence committed may be the offence of causing grievous hurt.—Queen •. Bhadoo Poramanick, 4 W. R. 23. [Loch and Glover, J]. Nov. 10, 1865.]

HELD by the majority that, where two members of an unlawful assembly use spears, and defiberately pierce another man through the chest and abdomen, with the knowledge that death is likely to ensue, although without proof of any intention to cause death, all the members of the unlawful assembly are jointly guilty of murder.—Queen v. Nazoo Fakir, 4 W. R. 26. [Kemp, Seton-Karr, and Campbell, JJ. Nov. 27, 1865.]

WHEN the corpus delicti is not established, there can be no conviction for culpable homicide not amounting to murder, nor for intentional omission to give notice of an offence which has not been proved to have been committed,—QUEEN v. RAM RUCHEA SINGH, 4 W. R. 29. [Kemp and Seton-Karr, J]. Nov. 28, 1865.]

INTRIGUING with a sister is sufficient grave provocation to justify a conviction of culpable homicide not amounting to murder as against the brothers who, finding the deceased lying with their sister in the same bed, ill-treated him, from the effects of which ill-treatment he died.—QUEEN v. KASSEEMUDDEEN, 4 W. R. 38. [Kemp, J. Dec. 2, 1865.]

The Judge, having convicted the prisoners of culpable homicide not amounting to murder, after having found that the act by which death was caused was undoubtedly done with the intention of causing such bodily injury as was likely to cause death, the conviction was quashed as illegal, because inconsistent with the finding, and a new trial ordered.—QUBEN v. SOUMBER GWALA, 4 W. R. 32. [Kemp and Seton-Karr, JJ. Dec. 5, 1865.]

HELD by the majority that, when four men beat another at intervals and so severely that death easues from the injury received, they must be presumed to have known that by such acts they were likely to cause death; that, moreover, when these acts were done when there was no grave or sudden provocation, or no sudden fight or quarrel, the offence which they have committed is murder; and that the offence of murder is not reduced to rulpable homicide not amounting to murder, by the absence of intention to cause death.

——Quarrel. POOSHOO, 4 W. R. 33. [Kemp, Seton-Karr, and Jackson, J]. Dec. 14, 1865].

HELD by the majority (Campbell, J., dissenting) that, if a man strikes another on the head with a stick when he is asleep, and fractures his skull, knowledge of likelihood of causing death must be presumed; and that, if none of the exceptions under s. 300 of the Penal Code are pleaded or probable, the offence committed is murder.—Queen v. Shrikh Chollyr, 4 W. R. 35. [Kemp, Jackson, and Campbell, JJ. Dec. 16, 1865.]

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A JUDGE should clearly acquit a prisoner of murder when so charged instead of melely finding him guilty of culpable homicide not amounting to murder. When a Judge acquits a prisoner of murder, the High Court cannot, either as a Court of Appeal, or as a Court of Revision, find that, according to the evidence, the prisoner caused death with the knowledge mentioned in cl. 4, s. 300 of the Penal Code; nor can the High Court, however wrong it may think the Judge to have been in acquitting of murder, or however inadequate it may think the sentence to be, correct the error, or enhance the sentence—Queen v. Toyab Sheikh, 5 W. R. 2; I Ind. Jur., N. S., 58, 87. [Peacock, C. J., and Kemp and Seton-Karr, JJ. Jan. 12, 1866.]

WHERE a man of full age (i. e., above 18 years) submits himself to emasculation performed neither by a skilful hand, nor in the least dangerous way, and dies from the injury, the persons concerned in the act are guilty of culpable homicide not amounting to murder.—QURES v. BABOOLUN HIJRAH, 5 W. R. 7. [Norman and Campbell,]]. Jan. 15, 1866.]

The punishment of death should not be inflicted in a case where there was no intestion to cause death, but merely a reckless assault with a deadly weapon, which inflicted a bodily injury likely in the ordinary course of nature to cause death.—Queen v. Khoza Sheik, 5 W. R. 20. [Campbell and Macpherson, JJ. Jan. 27, 1866.]

It is not murder, if a person kills another without intending to take his life, and if the acts done are not such as conclusively indicate an intention to cause such injury as was likely to cause death. In a referred case, and not an appeal, if the High Court deems a conviction wrong, the only course open to it is to annul the conviction, and order a new trial for the proper offence.—QUEEN v. SHEIKH SOLIM, 5 W. R. 41. [Seton-Karr and Macpherson, J]. Feb. 8, 1866.]

UNDER the Penal Code no constructive, but an actual, intention to cause death is required to constitute murder. Thus, where a lad of 15 years, in the heat of discovery of the deceased in the act of adultery with a near relative's wife, and without the use of any letfal or other weapon, joined the relative in committing an assault on the deceased, who died from the effects thereof, held that the offence committed was culpable homicide not amounting to murder.—Queen *e. Gurreboullah, 5 W.R. 42. [Norman and Campbell, J]. Feb. 12, 1866.]

Where a Judge acquits a prisoner of intention to kill, but admits that the prisoner struck the deceased with a highly lethal weapon, with the knowledge that the act was such as was likely to cause death, the conviction should be for murder, and not culpable homicide not amounting to murder. The failure of the Judge to convict the prisoner on the graver charge is not an error of law with which the High Court can interfere under its revising power.—Queen v. Soberl Maher, 5 W. R. 32. [Glover, J. Feb. 22, 1866.]

Held by the majority of the Court that the offence committed was murder where the death of a weak half-starved old woman, who was detected stealing, was caused in the exercise of the right of private defence, by the doing of more harm than was necessary for the purpose of such defence; Campbell, J., contra, being of opinion that a man who detects a thief stealing his property, and who, acting on the sudden impulse of the moment inflicts on the thief blows so severe as to be likely to cause death, but which he did not at the time know or feel to be likely to cause death, and which would not necessarily have caused death to a person in ordinary health, but which, owing to abnormal weakness in the deceased not known to him, did cause death, is not guilty of murder, but of culpable homicide not amounting to murder.—Queen v. Gokool Bowree, 5 W. R 33. Norman, Campbell, and Phear, JJ. Feb. 26, 1866.]

UNDER s. 404 of the Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 439 of the new Code of Criminal Procedure (Act X. of 1882), the High Court may set aside a judgment of acquittal for error in law. The High Court, as a Court of Revision, has power to enhance a punishment. The High Court may send the case back to the Court of Session with an order to pass the proper sentence. The High Court may act as a Court of Revision after it has acted as a Court of Appeal, in order to correct an error which cannot be set right by appeal. Culpable homicide and murder distinguished.—QUBEN v. GORACHAND GOPS, B. L. R., Sup. Vol., 443; 5 W. R. 45; 1 Ind. Jur., N. S., 177. [Peacock, C.]., and Trevor, Norman, Campbell, Jackson, and Glover, JJ. Mar. 3, 1866.]

INTOXICATION is no excuse for a man throttling to death another, and a weaker man, who was intoxicated also. The assessors having brought the case within excep. 4 of 2, 300 of the Penal Code without any good evidence or substantial grounds, the Sessions Judge

was held to have correctly overruled their verdict, and found the prisoner guilty of murdec.—QUEEN V. AKULPUTTER GOSSAIN, 5 W. R. 58. [Seton-Karr, J. Mar. 26, 1866.]

PRISONER found deceased in the act of house-breaking by night in his house, and hilled him with a kodali, which he had called for, as he admitted, for that purpose. He was convicted of murder, and sentenced to death by the Sessions Judge. The sentence being referred to the High Court for confirmation, it was held that the prisoner had been legally convicted of murder, that he had intentionally done to the deceased more harm than was necessary for any purpose of defence, and that not whilst deprived of the power of self-control. But the sentence was mitigated to transportation for life, than which, it was held, no less sentence could be legally passed. The Judge, however, in a letter to Government, suggested the mitigation of the punishment which was accordingly reduced to imprisonment for six months.—Queen v. Durwan Geer, 5 W. R. 73; I Ind. Jur., N. S., 252. [Jackson, Campbell, and Macpherson, J]. April 7, 1866.]

THE prisoners having abetted an assault, and murder having been committed, held, under the peculiar circumstances of the case, that they were guilty of abetment of grievous hull, and not abetment of murder.—QUEEN v. GOLUCK CHUNG, 5 W. R. 75. [Campbell and Macpherson, JJ. April 28, 1866.]

A person who beats another brutally and continuously, so that the back of the victim is reduced to a state of pulp, and yet studiously avoids breaking a bone (the viry fact of hie taking such a precaution evincing deliberation), is guilty of murder or culpable homicide not amounting to murder, according as there may or may not have been grave provocation.—Queen v. Teprah Fureer, 5 W. R. 78. [Kemp and Glover, JJ. May 9, 1866.]

Held in a case of murder that the Judge had not given a proper direction to the jury in telling them that it was for them to consider whether the evidence of the accomplice was strictly corroborated as to the prisoners; that it was not enough that the evidence should disclose a state of facts consistent with the possibility of the truth of the accomplice's story; and that the Judge ought to have gone through the history of the caime as detailed by the accomplice to point out any independent evidence proving facts showing that the prisoners were, or must have been, present at, or cognizant of, the murder.—Queen v. Karoo, 6 W. R. 44. [Norman and Campbell, JJ. July 24, 1866.]

THE sentence of death reduced to transportation for life in a case of murder committed rather by way of retaliation for injury than under the influence of any worse passion.—QUEEN v. Tonoo, 6 W. R. 46. [Kemp and Markby, J]. July 26, 1866.]

In a case of murder by consent, held that evidence of consent. which would be sufficient in a civil transaction, must be equally sufficient in exculpation of a prisoner's guilt.

—QUEEN v. ANUNTO RURNAGAT, 6 W. R. 57. [Kemp and Markby, J]. Aug. 25, 1866.]

A PERSON may be convicted of murder on his own confession. Where a master accompanies a servant, knowing the latter's intention to commit murder, and is present at the commission of the murder, although he struck no blow, still he is guilty as a principal, the only reasonable presumption being that both were acting with a common intent.—Queen v. Hyder Jolaha, 6 W. R. 83. [Kemp and Markby,]]. Sep. 21, 1866.]

A SENTENCE of death was commuted into one of transportation for life in case of a prisoner who committed murder in the belief that the deceased was a wizard and the cause of bin child's illness, and that, by killing the deceased, the child's life might be saved.—QUERN V. OORAM SUNGRA, 6 W. R. 82. [Kemp and Markby, J]. Oct. 5, 1866.]

A SENTENCE of transportation, other than for life, is illegal in the case of a prisoner convicted of murder.—QUEEN v. Вноотоо MULLICK, 6 W. R. 85. [Loch and Macpherson,]]. Nov. 27, 1866.]

HEAVY sentences reduced by the Chief Court to terms of imprisonment for two and three years, where death was caused on provocation in a sudden fight, no unfair advantage being taken on the deceased.—Crown v. Ameera, Panj. Rec., No. 12 of 1866; and Kesur Singer v. Crown, Panj. Rec., No. 13 of 1866.

ATTEMPT at murder must not be confounded with causing grievous hurt with dangerous weapons.—Gholam Russool v. Crown, Panj. Rec., No. 32 of 1866.

SENTENCE of confiscation of property in a case of murder annulled, as the accused bad a mother and young children.—Crown v. Sunt Singh, Panj. Rec., No. 35 of 1866.

Though voluntary drunkenness cannot excuse the commission of an offence, yet, where, as upon a charge of murder, the question is whether the act was premeditated or

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done only from sudden heat or impulse, the fact of the party being intoxicated was held to be a circumstance proper to be taken into consideration.—Crown v. BOODH DASS, Panj. Rec., No. 41 of 1866.

Accused, a police-constable, in the course of an inquiry into a theft-case, violently beat deceased, who died about nine days afterwards from the effects of the beating. Held that a conviction for culpable homicide could not be sustained, as there was nothing to show that the beating was likely, to the knowledge of the prisoner, to cause death. Conviction altered to one under s. 330, Penal Code. Sentence—seven_vers' imprisonment and Rs. 200 fine.—Meeah Mahomed v. Crown, Panj. Rec., No. 86 of 1866.

PRISONER was charged with murdering his wife. She had eloped from her husband, and, on his bringing her back, she was sulky and obstinate, refused to cook his food, or to eat and cohabit with him. Provoked by this, he struck her a violent blow with an axe, which killed her. Held that the offence was culpable homicide. Fourteen years' transportation.—FUZL SHAH v. CROWN, Panj. Rec., No. 87 of 1866.

By his own confession and the other evidence, prisoner killed with a hatchet Mussammat Almo, his sister, and Choohur, having found them sleeping together at Choohur's cattle-enclosure. The accused, on information received, had gone in search of her and Choohur, expecting to find them together. He had gone armed with a hatchet, but he stated in his defence that he lost control over himself on finding them together, and so killed them both. Held, with regard to the punishment, that the injury to the feelings of the accused, though hardly to be deemed sudden or unexpected, considering that he had himself gone to the spot expecting to find Almo, as, in fact, he found her, was great. Nor was the absence of sufficient sudden provocation inconsistent with the absence of premeditation, for murder may result from the reckless anger of the moment. Moreover, in this case, the existence of premeditation was not necessarily to be inferred from the prisoner's conduct. Once before there had been violence on such an occasion, and the prisoner's taking the hatchet was open to the doubt that he might have thought proper to de so without designing murder at the time of setting out. Sentence of death commuted.—Crown v. Mahomed, Panj. Rec., No. 107 of 1866.

In a case of murder, where a man was struck on the head in a boat with a heavy paddle, and knocked overboard in a large river in the height of the rains, and never been heard of since, it was held impossible to suppose that the man was still alive.—Queen v. Poorusoollah Sikhdar, 7 W. R. 14. [Norman,]. Jan. 21, 1867.]

WHERE a man suddenly cut his wife's throat, it was held that, in order to establish that the act was not done under grave provocation so as to bring the case under excep. I of s. 300 of the Penal Code, it is not sufficient to state that the deceased ceased abusing the prisoner then, but it is necessary to show what interval elapsed between the time when the deceased ceased to speak and the instant when the prisoner attacked her.—Queen v. Norul Nushvo, 7 W. R. 27. [Norman and Seton-Karr, JJ. Feb. 4, 1867.]

JUDGES must not shrink from doing their duty, and they are bound to pass a capital sentence in a case of murder when they believe the evidence.—QUEEN v. SIBNARAIN PALOU-HEB, 7 W. R. 33. [Seton-Karr, J. Feb. 18, 1867.]

WHERE a prisoner, convicted of murder against the opinion of assessors, was sentenced to transportation for life, the High Court reduced the sentence to ten years' rigorous imprisonment, remarking on the severity of the Penal Code, and on the necessity of administering it, so as to make it apply to the various gradations and degrees of crime in this country.—Queen v. Hossein Ally, 7 W. R. 47. [Seton-Karr and Shumbhoonath Pundit, J]. Mar. 19, 1867.]

PROOF of motive or previous ill-will is not necessary to sustain a conviction for murder in a case where a person is coolly and barbarously put to death.—QUEEN v. JAICHAND MUNDLE, 7 W. R. 60. [Seton-Karr, J. April 29, 1867.]

CURIOUS case of murder, where a father sacrificed his son, because wealth had not accompanied its birth, and afterwards cut his own throat as a protest against his deity's injustice.—QUEEN v. BISHENDHAREE KHARA, 7 W. R. 64. [Glover and Hobhouse, JJ. May 7, 1867.]

. Where a quiet peaceful man suddenly, and without the least motive or provocation, runs amuck against all round him, his case is different from an ordinary case of deliberate murder deserving of the extreme penalty.—Queen v. Bishonath Bunnera, 8 W. R. 53. [Kemp and Glover, JJ. July 29, 1867.]

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Two parties met each other in a drunken state, and commenced a quarrel, during which they became grossly abusive to each other. This lasted for about half an hour, when one of them can to his own house, distant 30 yards from the spot, and came back with a heavy pestle, with which he struck the other a violent blow on the left temple, as the latter was rising, or had just risen, from the ground, causing instant death. Held that the act was done with the intention of causing such bodily injury as was likely to cause death, and also with the knowledge that such act was likely to cause death, and that the offence committed was murder within the provisions of cls. 2 and 3, s. 300, Penal Code.—Queen v. Dasser Bhooyan, 8 W. R. 71. [Kemp, Seton-Karr, and Mitter, JJ. Sep. 11, 1867.]

WHERE an accused killed A, whom he had no intention of killing, by a blow with a highly lethal-weapon, like a sharp dao, intended to kill B, he was held guilty of the murder of A.—Queen v. Phomonee Ahum, 8 W. R. 78. [Glover, J. Oct. 29, 1867.]

In order to constitute the offence of attempt to murder under s. 307 of the Penal Code, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary evourse of events. Aliter under s. 511 taken in connection with ss. 299 and 300. Therefore, where the prisoner presented an uncapped gun at E. G. (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger, held that he could not be convicted of an attempt to murder upon a charge framed under s. 307 of the Penal Code, but that, under the same circumstances, he might be convicted upon a charge of simple attempt to murder framed under s. 511 in connection with ss. 200 and 300. Unnecessary allegations in a charge may be rejected as surplusage. Apparent inconsistency between the English law, with reference to attempt as laid down in Reg. v. Collins (33 Law J., M.C., 177) and the provisions of the Penal Code explained.—Reg. v. Francis Cassidy, 4 Bom. H. C. R. 17. [Couch, C.J., and Westropp, J. Dec. 23, 1867.]

THE three accused were convicted of murdering their cousin, who had supplanted one of the accused in an intrigue with Mussammat F. The accused caught the deceased and Mussammat F. together. Held that, with due advertence to the state of society in the Rawalpindi district (where the case occurred), the sentences of death should be commuted.—Crown v. Fuzl, Panj. Rec., No. 2 of 1867.

Accused confessed to a charge of murder. His confession, made before the Magistrate and Sessions Court, was, in fact, corroborated by other evidence, but conflicted with the medical evidence; and the Sessions Judge considered it not improbable that accused had been influenced by the police to confess. Held by the Chief Court that it would be safer not to confirm the sentence.—Crown v. Meer Khan, Panj. Rec., No. 3 of 1867.

WHEN a prisoner is on his trial by a jury upon a charge of murder, it is the duty of the Judge to point out to the jury accurately the difference between murder and culpable homicide not amounting to murder, and to direct the attention of the jury to the evidence, and to leave them to find the facts, and say (under the direction of the Judge as regards the law) of what offence the prisoner is guilty. Where the provision of s. 379 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 297 of the new Code of Criminal Procedure (Act XXV. of 1882), was neglected, and the Judge did not sum up the evidence at all, a new trial was ordered. Elahee Baksh's Case (5 W. R. 80) considered.—Queen. Shumshere Beg, 9 W. R. 51. [Macpherson and Glover, J]. Mar. 28, 1869.]

To bring a case under cl. 4, s. 300, it must be proved that the accused, in committing the act charged, knew that it must, in all probability, be likely to cause death, or that it would bring about such bodily injury as would be likely to cause death. Held that a case in which he accused person pursued a thief, and killed him after house-trespass had ceased, did not all within the and exception to s. 300, the right of private defence of property continuing inder cl. 5, s. 105, only so long as the house-trespass continues.—Queen v. Balaker Johann, io W. R. 9; I. B. L. R., S. N., 8. [Glover, J. July 3, 1868.]

In determining whether a declaration alleged to have been made by a deceased pernor is admissible as dying declaration under s. 371, Code of Criminal Procedure (A& XXV. of 1861), corresponding with s. 32 of the Indian Evidence A& (I. of 1872), a Sessions Indge ought to direct his attention to the point whether the declarant believed inwelf to be in danger of approaching death. The evidence of persons who cannot peak of their personal knowledge to such declaration should not be admitted; and, in leciding whether the accused is guilty of the charge of murdering the deceased declarant,

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D. E. F (ignorant cooker) make incante in extracted to fange for Herait applicable tothe above ca SEC. 302.] OFFENCES AFFECTING THE HUMAN BODY. the Court should confine itself to inquiring into the facts which occurred on the day of

should be of the strictest kind .- QUEEN v. ZUHIR, 10 W. R. att. Phear and Hobhouse, JJ. July 8, 1868.] To give an accused the benefit of excep. 1, s. 300 of the Penal Code, it ought to be shown distinctly, not only that the act was done under the influence of some feeling which took away from the person doing it all control over his action, but that that feeling had an adequate cause .- Queen v. Huri Giree, 10 W. R. 26 PI B. L. R., A. Cr., 11.

the murder. The evidence as to the motives with which a prisoner commits an offence

[Loch and Glover, JJ. Aug. 7, 1868.] Held that, where, from the circumstances, it appeared that a child who had been exposed by the prisoner did not die in consequence of the exposure, except in a remote degree, the prisoner, though guilty under s. 317 of the Penal Code, could not be convicted of murder. That section contemplates cases in which death is caused from cold or some other result of exposure.—Queen v. Khodabux Fakeer alias Khudiram Fakeer 10 W. R. 52. [Loch and Glover,]]. Nov. 19, 1868.]

To bring a case under cl. 4, s. 300 of the Penal Code, it must be proved that the accused, in committing the act charged, knew that it must, in all probability, be likely to cause death, or that it would bring about such bodily injury as would be likely to cause death. When a poisonous drug was administered to a woman to procure miscarriage and death resulted, and it was not proved that the accused knew that the drug would be likely to cause death, &c., they were acquitted by the High Court of murder, and convicted of an offence under s. 314 of the Penal Code.—QUEEN v. KALACHAND GOPE, 10 W. R. 59. [Phear and Hobhouse, JJ. Dec. 8, 1868.]

Accused was out in the jungles with his gun. An altercation arose between him and deceased, the former interfering to prevent the latter from committing real or supposed cattle-trespass. Deceased, thereupon, with a large club, attacked accused, who fired without any particular aim, but lowering the muzzle of the gun, so as not to hit a vital part; and death ultimately resulted from the wound inflicted. Held that accused's act was not a legal exercise of the right of private defence, as it was not recessary for his defence that he should fire; he had only to stand back and let deceased alone, and he was safe. Held accordingly, that the accused was rightly convicted of culpable home cide not amounting to murder. - Crown v. Kurreem Buksh, Panj. Rec., No. 13 of 1868.

GUILTY intention or knowledge is a constituent part of the offence of culpable homicide, and although every unlawful act is presumed to be wrongly intended until the contrary is shown, yet it is for the Court to consider whether the whole case does not disclose circumstances (whether they come from the accused or the prosecutor) which negative the existence of such intention. It is only in the exceptional cases mentioned in s. 300-of which there should be evidence—that culpable homicide can be taken out of the category of murder, and reduced to an offence of lower degree. - JEHANGEER KHAN v. CROWN, Panj Rec., No. 22 of 1868.

A JUDGE was held to have exercised a proper discretion in not passing sentence of death in a case in which the dead body was not found .- QUEEN v. BUDDURUDDEEN, II W. R. 20. [Norman and Jackson, JJ. Mar. 9, 1869.] A LARGE body of men belonging to one faction waylaid another body of men belong

ing to a second faction, and a fight ensued, in the course of which a member of the firstmentioned faction was wounded, and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed tive part in the affray. Held by Norman, J. (whose opinion prevailed), that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under s. 149 of the Penal Code, be made liable for the subsequent murder. Held by E. Jackson, , that he remained a member of the unlawful assembly .- QUEEN v. KABIL CAZER, 3 B. L. R., A. Cr., I. [Norman and Jackson, JJ. April 8, 1869.]

THE legal right of private defence of the body and property is not exceeded by a person who is attacked by another with a spear, and who strikes a blow with a lathi which results in the death of the party attacking; and such right of private defence of the body extends, under s. 100 of the Penal Code, to the taking of life where grievous hurt is reasonably apprehended.—QUEEN v. MOIZUDIN, II W. R. 41. [Jackson and Markby,]]. April 29, 1869.]

THE accused, who professed to be snake-charmers, persuaded the deceased to allow themselves to be bitten by a poisonous snake, inducing them to believe that they had

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to protect them from harm. Held that the offence would have been murder under of the Penal Code, if, under the circumstances of the case, it did not fall within the eption to that section. Held that the consent given by the deceased allowing lives 30 be bitten did not protect the accused, such consent having been founded isconception of facts, that is, in the belief that the accused had power by charms snake-bites, and the accused knowing that the consent was given in consequence misconception [8, 90, Penal Code).—QUEEN v. POONAI FATTEMAH, 12 W. R. 7; R., A. Cr., 25. [Norman and Jackson, JJ. June 14, 1869.]

LISONER caused to be given to deceased some substance which he alleged to have wen with intent to bring on madness. Held that the act of the prisoner was known to be likely to cause death, and therefore he was properly convicted of murder; death was not the immediate object of his intention, the sentence of death was ted.—Crown v. Khema, Panj. Rec., No. 8 of 1869.

PON an inoffensive remark made by deceased, Fazl Khan picked a quarrel with himter some words had passed between the two, Fazl Khan held the deceased's arms by his side, while Muhammad Khan inflicted a stab which caused death. Held that soner was improperly convicted of culpable homicide not amounting to murder, and have been convicted of murder. A Court should find clearly the exception under which, in the Court's opinion, exists as a reason for reducing the offence to culomicide not amounting to murder.—MAHOMED KHAN v. CROWN, Panj. Rec., No. 12

HERE there was no direct evidence of a murder having been committed, but the donfessed that he had burnt the body of the deceased after death, though he denied had murdered her, or that she had been murdered, the Court presumed from all is and statements, of the accused, and the presence of motive and other circum, that deceased was violently put to death, and by the hands of the accused, and conthe sentence of death accordingly.—Crown v. Bunna, Panj. Rec., No. 13 of 1869.

HERE the accused were convicted of rioting and murdering a jamadar of chaukiho was assisting the police to apprehend a proclaimed offender, held that the fact
murder being committed without preconcertion or personal enmity did not warrant
soions Judge in abstaining from passing sentence of death.—Crown v. Ditta,
Rec., No. 31 of 1869.

MDER excep. I, s. 300, the finding of a jury as to whether the offence of murder mmitted under grave and sudden provocation sufficient to prevent the offence from ting to murder is a question of fact with which the High Court cannot interfere. EN W. SOHRAIE, 13 W. R. 33. [Jackson and Hobhouse, JJ. Feb. 19, 1870.]

HERE the accused pleads guilty before 2 Sessions Judge to a charge of murder, ssions Judge might either convict him on that plea of that charge, or proceed to ron the evidence; but he cannot, without trial, convict the accused of culpable de not amounting to murder, to which offence the accused did not plead guilty. with reference to the provisions of ss. 97, 99, and 102 of the Penal Code, that on to so fthis case the accused had no reasonable apprehension of danger to himself the threats of the deceased whom he killed, and that, therefore, the right of private of the body did not arise, and the case was not taken out of the category of murreason of the 2nd exception to s. 300 of the Penal Code.—QUEEN v. GOBADUR AN, 13 W. R. 55; 4 B. L. R., Ap., 101. [Jackson and Glover, J]. April 6, 1870.] is a conviction for murder, the only punishments that can legally be awarded are transportation for life.—QUEEN v. BANI DOSS, 14 W. R. 2. [Bayley and Markby, ne 4, 1870.]

of Allyghur, obtained a decree against B and C of Kasheepoor for their share in property. A sent four men to take possession and plough the land, which was d by six men of Kasheepoor. A fight ensued, resulting in the death of one of the poor men, caused by a blow inflicted by one of the Allyghur men. The Deputy issioner convicted the four Allyghur and five surviving Kasheepoor men of being rs of an unlawful assembly, and of culpable homicide. Held, on appeal, that there common object on the part of the two factions, and therefore they did not jointly n unlawful assembly under s. 141; that the Kasheepoor men merely exercised the f private defence under s. 97; and that the Allyghur men, being less than five in r, did not compose an unlawful assembly, but that the Allyghur man who struck the

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fatal blow was guilty of culpable homicide, and the test of his party of abetting that offence.—Kullen v. Crown, Panj. Rec., No. 13 of 1870.

CONVICTION by a jury set aside in a case of murder in which there was a total absence of all evidence to show that the prisoner had committed the crime.—QUEEN v. BAHAR ALI KAHAR, 15 W. R. 46. [Jackson and Mookerjee, JJ. Mar. 25, 1871.]

CAPITAL sentence should be pronounced on a conviction for murder, even if the accused be pregnant, although the execution of the sentence should be deferred till after delivery.—Queen v. Panher Aurut, 15 W. R. 66. [Bayley and Paul, JJ. May 3, 1871.]

Persons found guilty of rioting may, if the circumstances warrant it, be touvicted of the several offences of rioting armed with deadly weapons, culpable homicide, and grievous hurt.—Queen v. Hurgobind, 3 N.-W. P. 174. [Turner,]. July 7, 1871.]

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In a case in which the prisoner was charged with murder, and he made a confession that he did strike the deceased with a stick, the Sessions Judge, after considering the evidence, discredited the confession and all the evidence except that of the medical officer, and discharged the prisoner, not considering it necessary that the case should go before a jury. Held that the Sessions Judge had no right to pronounce his case who judgement on the credibility of the evidence, and to withdraw the consideration of the due weight to be given to the evidence from the jury.—In re Hurro Shaha, 16 W. R. 20.4 [Ainslie and Paul, J]. July 20, 1871.]

THE Court has no power, even where there is ground for doing so, to mitigate a sentence of transportation for life passed on persons found guilty of murder.—QUEEN r. JAMAL, 16 W. R. 65. [Kemp and Jackson,]]. Dec. 9, 1871.]

Where the Sessions Judge convicted the accused of culpable homicide not amounting to murder, and sentenced him to seven years' rigorous imprisonment, the Chief Court, on the Revision Side, not finding any of the exceptions under s. 300 established, altered the conviction to one of murder, and sentenced the accused to transportation for life—Crown v. Gholam Mahomed, Panj. Rec., No. 11 of 1871.

ACCORDING to the prisoner's statement (the only direct evidence in the case), Massammat Wahabji solicited him to continue a criminal intercourse which had existed between them; and, on his declining, she kicked him, on which he struck her a blow over the region of the heart, throttled her till she ceased breathing, and then flung the body into a well. Held that there was not such grave and sudden provocation as reduced the offence to culpable homicide, and that the case did not fall under the 4th exception of s. 300, Penal Code (sudden fight, &c.), because the prisoner acted in a cruel and unusual manner, but that the provocation received by the accused was a sufficient reason for not passing sentence of death. Sentence commuted accordingly.—Crown v. Sumundur, Panj. Rec., No. 4 of 1872.

J. WITH three others, all of them unarmed, attempted late at night to steal wood from H S's field. M S, who was in charge of the field, raised an alarm, and H S, with K S and L S, came up and seized J and S D, another of the thieves. H S and his party, who were armed with sticks, struck J and S D, and took them into the village, J being senseless from the blows, and S D uninjured. J died next morning from one of the blows received, which had broken one of his ribs, and which was the only serious blow inflicted. The Deputy Commissioner convicted H S, M S, K S, and L S, of culpable honficide, holding that, though it was not shown which of the four inflicted the fatal blow, they were all found guilty, as they were acting together for a common purpose. Held by the Chief Court that, with reference to the common purpose of the accused to arrest the case, and as it had not been found that the accused had used excessive violence, the conviction must be set aside.—HIRA SINGH v. CROWN, Panj. Rec., No. 26 of 1872.

Where it appeared that the prisoner, a Rajput, had allowed his female child, after the mother's death, to gradually languish away and die from want of proper sustenance and had persistently ignored the wants of the child, although repeatedly warned of its state and the consequences of his neglect of it, and there was nothing to show that the prisoner was not in a position to support the child, held that the offence which the prisoner committed was murder, and not simply culpable homicide not amounting to murder.—Queen v. Gunja Singh, 5 N.-W. P. 44. [Spankie,]. Feb. 19, 1873.]

In a case of murder, the statement made by the deceased in the presence of his neighbours and of a head-constable was admitted as relevant evidence under s. 22, cl. 1,

Act I. of 1872, that section providing that such statement is relevant, whether the person who made the statement was or was not at the time when it was made under expectation of death.—QUEEN v. DEGUMBER THAROOR, 19 W. R. 44. [Kemp and Glover, JJ. Mar. 12, 1873.]

Where a person under sentence of transportation for life on a conviction for murder is found guilty of murder on a subsequent and different charge, the only sentence that can be passed on him according to s. 303, Penal Code, is that of death. The prisoner, who was charged with having committed murder, was found by the jury who tried him to have been of unsound mind at the time he committed the offence. The Sessions Judge, differing in that point from the jury, referred the case to the High Court under s. 263 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 307 of the new Codenof Criminal Procedure (Act X. of 1882). Held that, in a case of this kind, the High Court will not interfere, without the very clearest proof that the jury were mistaken, and that the interests of justice imperatively required the Court to take action under the extraordinary powers conferred upon it by s. 263, Code of Criminal Procedure, 1822 (corresponding with s. 307, new Code of Criminal Procedure, 1882). On a consideration of the medical evidence, the Court declined to interfere with the verdict of decuintal which the jury came to.—Queen v. Doorjodhun Shamonto alias Deejobor, 19 W. R. 45. [Kemp and Glover, J]. Mar. 15, 1873.]

THE accused confessed to a police constable, on being assured by him that nothing would happen to her, that she had killed her new-born child, and had buried it in the enclosure of her house. This statement led to the discovery of some bones of the head of an infant, a stone stained with blood, and a knife, with which stone and knife she said that she had killed her child. Before the committing Magistrate she made the same statement. In her trial before the Sessions Judge, she admitted the birth of the child. She stated/ that it did not cry, and that she buried it, not knowing whether it was alive or dead. She also stated that the police-constable had pressed and threatened her, and told her that, if she confessed the truth, nothing would happen to her. She denied having killed the child with the stone and sickle, and said that she had merely pressed it on the ground, and then buried it. There was no evidence to show that the child was born alive. Held that the confession before the Magistrate was irrelevant, and that the Court was not prepared to say that the confession made before the Sessions Judge was made after the impression caused by the promise of the police-constable had been fully removed, and that, looking at the fact that a promise of safety had been made, the confession was, even if accepted, of a limited character, and there was nothing to show that the child was born alive; and considering that, if the child was born dead, the accused might, under fear of exposure and disgrace, have wished to conceal the body, the accused must be acquitted of murder.

—QUEEN v. Mussumat Luchoo, 5 N.-W. P. 86. [Spankle, J. April 5, 1873.]

The prisoner having admitted before the Court of Session that he had killed his wife, no assessors were impannelled. At the end, however, of his confession, he pleaded that he was not in his right mind at the time. The Judge, therefore, proceeded to record medical and other evidence on the point, and, having come to the conclusion that there was no reason to doubt from the prisoner's conduct, either prior or subsequent to the murder, that, in committing the murder, he knew that he was doing a wrong act, convicted the prisoner. Held that the plea was, in effect, one of not guilty, and that the trial should not have proceeded without assessors, and that it should be quashed.—
Queen v, Cheit Ram, 5 N.-W. P. 110. [Spankie, J. April 14, 1873.]

The statement of a Judge, who presides at a criminal trial, is, upon a case reserved under the 25th clause of the Charter of the High Court, or upon a case certified by the Advocate-General under its 26th clause, conclusive as to what has passed at the trial. Neither the affidavits of bystanders or of jurors, nor the notes of counsel or of shorthandwriters, are admissible to controvert the statement of the Judge. It is in the discretion of the Judge, who presides at a criminal trial, whether or not he will reserve a point of law for the opinion of the High Court, and such discretion will not be reviewed by the High Court sitting as a Court of Review, under cl. 26 of the Letters Patent. Semble.—Non-direction by a Judge is not a matter upon which the Advocate-General should grant a certificate under cl. 26 of the Letters Patent. In considering whether a Judge has misdirected the jury, the tenor and general effect of the whole summing up should be looked at, and if, upon the whole summing up, the Court is of opinion that substantially the profer direction has been given to the jury, it will not interfere, though the Judge has omitted to direct the jury expressly on some important point. Quære.—Whether abet-

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ment of murder by sorcery or other impossible means is an offence under the Penal Code? In criminal cases the High Court will not, in general, grant leave to appeal to the Privy Council, unless some important question of law or practice, og jurisdiction, is involved. Considerations that guide the Court in granting leave to appeal in such cases stated, and instances in which such leave has been granted mentioned.—Reg. v. Pestanji Dinsha, 10 Bom. H C. R. 75. [Westropp, C.J., and Gibbs, Sargent, Bayley, and Melvill. JJ. May 21, 1873.]

In a case in which the accused were charged with murder (s. 302), culpable homicide not amounting to murder (s. 304), and voluntarily causing grievous hurt (s. 325), the Sessions Judge at the trial added a further charge of house-breaking by night in order to the commission of an offence (s. 457). The jury unanimously acquitted the prisoners of the three original charges, and a majority of the jury (four out of five) acquitted them also The Sessions Judge agreed with the verdict of the jury as regards the three original charges, and recorded a formal order acquitting and discharging the prisoners on these three charges. He differed from the majority as to the fourth charge, and referred the case to the High Court under s. 263 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s 307 of the new Code of Criminal Procedure (Act X. of 1882). Held that, where (as in this case) the Sessions Judge has approved a verdict on certain charges, and finally acquitted and discharged the accused as to these charges, the High Court cannot, under s. 263, convict on the facts on these very charges. section seems to contemplate only a case in which, without recording any order of acquittal or conviction, the Sessions Judge refers the whole case. As there was nothing in this case to show on what grounds the majority of the jury acquitted the prisoners on the additional charge, and, as the Sessions Judge agreed with the unanimous verdict as to the three original charges, the High Court presumed that the reason which weighed with the majority of the jury in finding the prisoners not guilty on the additional charge must have weighed with the whole jury in finding them not guilty on all the three other charges, and accordingly the Court could not set aside the verdict of the majority on the last count without practically finding directly in the teeth of the verdict of the unanimous jury on the first three counts.—QUEEN v. UDYA CHANGA, 20 W. R. 73. [Macpherson and Glover, JJ. Nov. 3, 1873.]

In a case in which the accused was tried on charges of murder, culpable homicide, and causing grievous hurt, the jury acquitted him of murder, but convicted him on the The verdict was recorded by the Sessions Judge, who then, in accordance other counts. with s. 263, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 307 of the new Code of Criminal Procedure (Act X. of 1882), questioned the jury as to the grounds for their verdict, and the jury eventually intimated their willingness to convict The Sessions Judge differed from the first verdict of the jury; but, as he had recorded the first verdict, he doubted whether he could accept the second verdict, and referred the case to the High Court under s. 263. *Held* that s. 263 did not apply to such a case as this. There could be no verdict delivered, and no verdict finally recorded, until the last of the questions put by the Sessions Judge to the jury was answered: and, as it appeared from the answers of the jury that their findings of facts disclosed that the verdict ought to have been one of guilty on the charge of murder, the Sessions Judge should have entered the verdict of the jury as the verdict of guilty of murder. The case was accordingly returned to the Sessions Judge to enable him to do that, and to pass such sentence as the law directed. It is only when it is necessary in order to ascertain what the verdict of a jury really is that a Judge is justified under s. 263 in putting questions to the jury.—QUEEN v. SUSTIRAM MANDAL, 21 W. R. 1. [Phear and Morris, JJ. Nov. 19, 1873.]

The knowledge that an act is likely to cause death does not constitute culpable homiuide amounting to murder. It must be shown that the act was committed with the knowledge that it must, in all probability, cause death.—Queen v. Gridharee Singh, 6 N.-W.P. 26. [Turner,]. Nov. 29, 1873.]

WHEN a Sessions Judge finds the accused guilty of murder, the sentence of death must be passed, unless there is some extenuating circumstance, some excuse, which, though the law does not regard it as sufficient to reduce the killing to the offence of culpable homicide, is ground for looking leniently on the act. The fact that the accused was not arrested when actually committing the crime, or in the act of escaping from the spot, is no reason for not passing sentence of death.—Kamal v. Crown, Panj. Ret., No. 13 of 1873.

UNDER S. 280 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 423 of the new Code of Criminal Procedure (Act X. of 1882), the High Court altered the condiction in this case from culpable homicide into one for murder, and enhanced the sentence accordingly.—QUEEN v. SHEIKH ROHEEM, 21 W. R. 39. [Jackson and Ainslie,]]. Feb. 5, 1874.]

In a case in which the accused was charged with murder, the Sessions Judge considered the evidence given before him by the witnesses for the prosecution to be false, but nevertheless convicted the accused, acting under s. 249 of the Code of Criminal Procedure, and relying on the evidence which had been given by the same witnesses before the committing officer. Held that s. 249 did not apply to this case; that the discretion conferred by that section should be exercised upon substantial materials, rightly before the Court, and reasonably sufficient to guide the judgment of the Court to the truth of the matter, and not upon mere speculation or conjecture; and that, under that section, a Judge may base his judgment on the evidence given before the Magistrate in the presence of the accused, when there are special and particular reasons for considering that evidence to be honest and true, and when that evidence is, to a certain extent, corroborated by independent testimony before himself.—Queen v. Amanullail, 21 W. R. 49; 12 B. L. R., Ap., 15. [Phear and Morris, J]. Mar. 16, 1874.]

THE High Court, in exercise of the powers conferred on it by s. 280 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 423 of the new Code of Criminal Procedure (Act X. of 1882), altered the conviction in this case by the Sessions Judge from grievous hurt into one for murder, and enhanced the punishment accordingly.—Queen v. Saffiruddi Palwan, 22 W. R. 5; 13 B. L. R., Ap., 23. [Kemp and Birch, JJ. April 22, 1874.]

The evidence of a child of immature age—who, the Sessions Judge considered, understood the questions which were put to her, and who was therefore a competent witness under s. 118 of the Evidence Act—taken by the Sessions Judge on a simple affirmation, because he was not aware of the responsibility of an oath, was held to be admissible as evidence under s. 13 of the Oaths Act (X. of 1873). Case of Dwarkanath Dutt (7 W. R. 15), which ruled that a Court, before which a second trial is held, has nothing to do with the evidence given in the former trial; except for the purpose of ascertaining whether the offence in the two trials is the same, followed. A prisoner originally charged with an offence under one section (302), and acquitted of that charge, was committed, the day following that on which she was acquitted, for trial under another section (307), without any witnesses being examined on the charge under s. 307, and without having any opportunity of cross-examining the witnesses on the first charge, with respect to the second charge. Held that the irregularity was one which was not covered by s. 283, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 537 of the new Code of Criminal Procedure (Act X. of 1882), and that the prisoner had been prejudiced thereby in her defence. The trial under s. 307 was accordingly quashed, and a new trial ordered.—Queen v. Mussamut Itwarva, 22 W. R. 14; 14 B. L. R. 54. [Kemp and Birch, JJ. May 9, 1874.]

WHERE a blow is struck by A in the presence of, and by the order of, B, both are & principals in the transaction; and where two persons join in beating a man, and he dies, it is not necessary to ascertain exactly what the effect of each blow was.—Queen v. Mo-HAMED ASGER, 23 W. R. 11. [Markby and McDonell, JJ. Dec. 12, 1874.]

A PARTY charged along with others with murder, having had a conditional pardon granted to him by the Deputy Magistrate, retracted before the Sessions Judge the statements he had made before the Deputy Magistrate. On being sent back to the Deputy Magistrate, that officer committed him for trial on a charge of giving false evidence. The Sessions Judge considered that the Deputy Magistrate was bound, under s. 349, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 339 of the new Code of Criminal Procedure (Act X. of 1882), to commit on the original charge of murder, and not on that of giving false evidence; and he recommended that the order of commitment should be quashed, and the Deputy Magistrate directed to commit on the charge of murder. The High Court declined to interfere, as there was evidence on the record tending to support the charge for giving false evidence, and as s. 349 did not have the effect of taking away from Magistrates the power to entertain a charge of this kind.—Queen v. Mullik Jerchoo, 23 W. R. 12. [Phear and Morris, J]. Jan. 4, 1875.]

A SESSIONS JUDGE is bound to decide whether the offence committed is murder, or culpable homicide not amounting to murder, even if the person who struck the fatal blow

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is not under trial. If an accused has not his witnesses present, the Judge should, under s. 251, Criminal Procedure Code (Act X. of 1872), corresponding with s. 289, new Code of Criminal Procedure (Act X. of 1882), if he sees grounds for proceeding, first call upon him for his defence, and then postpone the case.—QUEEN v. JUMINUDDIN AND FAIZUDDIN alias FAGOO, 23 W. R. 58. [Jackson and McDonell, JJ. April 8, 1875.]

Where a murder is not premeditated, transportation for life is a sufficient punishment. A Sessions Judge should not import into his judgment the opinion of an assessor derived from personal knowledge, and unsupported by evidence on record.—QUEEN T. RAM CHURN KURMOKAR, 24 W. R. 28. [Birch and Lawford, J]. July 13, 1875.]

Where a person, accused of murder, acknowledged having struck his victim, but repudiated the integtion to murder, and the Sessions Judge accepted this acknowledgment as a plea of guilty, and omitted to record any further evidence, held that the Judge was bound to accept the statement of the accused as a whole, if it was taken as a confession at all. Conviction for murder accordingly set aside, and new trial ordered.—Queen Sonaoollah, 25 W. R. 23. [Macpherson and Morris, JJ. Mar. 14, 1876.]

WHERE an act which causes death is done with an intention to kill, the offence is always murder. Where the act causing death is done without any intercion to cause death or bodily injury, whether the offence is culpable homicide or murder, depends on the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder. When the act causing death is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, the offence is murder, if the offender knows that the particular person injured is likely, from peculiarity of constitution, or immature age, or other special circumstance, to be killed by an injury which would not ordinarily cause When the act causing death is done with the intention of causing such bodily injury as is likely to cause death, it is culpable homicide; if done with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death, It is murder. When the prisoner knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with his clenched fist, producing extravasation of blood on the brain, and she died in consequence, either on the epot, or very shortly afterwards, held, there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death, the offence was culpable homicide, and not murder.—REG. v. GOVINDA, I. L. R., 1 Bom. 342. [Kemball and Nanabhai Haridas, JJ. July 18, 1876.]

WHERE an accused person had been charged with the murder of a woman whom he was proved to have attempted to take away from her husband, and the assessors who had heard the case with the Judge found him guilty, but the Judge, without any evidence to support his hypothesis, had thrown out the supposition that the accused was the victim of a conspiracy, and acquitted him, and the Local Government appealed from the sentence of acquittal: Found by the High Court that there was no evidence in support of the Judge's supposition of the innocence of the accused, and held that his wrongful acquittab by the Judge could not stand between him and the sentence of death which was the punishment for his offence. The accused was accordingly sentenced to be hanged.—Queen v. Ridhay Patro, 26 W. R. I. [Jackson and McDonell, JJ. Dec. 14, 1876]

DECEASED, who had an enlarged spleen, was struck by the accused in the course of a quarrel, and died owing to his bodily infirmity. Held that, in the absence of any knowledge on the part of the accused of the diseased condition of the deceased, the offence was not culpable homicide, but using criminal force under s. 352, Penal Code.—Crown r. JAI DYAL, Panj. Rec., No. 12 of 1876.

On the trial by a jury of a person on a charge of murder, the jury found the accused not guilty of the offence of murder, but convicted him of culpable homicide not amounting to murder. The Sessions Judge, although he disagreed with the verdict, declined to submit the case to the High Court under s. 263 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 307 of the new Code of Criminal Procedure (Act X. of 1882). The Local Government thereupon directed the Legal Remembrancer to appeal under s. 272 of the Code (or s. 417 of the Code of 1882), and in pursuance of this direction an appeal was preferred by the Junior Government Pleader. Held that the appeal was duly made. Held further that a judgment passed by the Court of Session, following the verdict of a jury acquitting the prisoner, is a judgment of acquittal within the meaning of s. 272 (or s. 417 of the new Code). Held also that, there being an acquittal on the charge

of hurder, the appeal lay.—Empress v. Jodoonath Gangooly, I. L. R., 2 Cal. 273. []ackson and MeDonell, JJ.]an. 18, 1877.]

THE prisoner was found guilty, and sentenced, under Reg. IV. of 1797, to transportation for life, for a murder committed in 1861, before the Penal Code came into opera-tion, and the case was sent up to the High Court to confirm the sentence. Reg. IV. of 1797 was repealed by Act XVII. of 1862, and that Act was wholly repealed by Acts VIII. of 1868 and X. of 1872. Held, on a reference to a Full Bench, that the conviction was illegal, s. 6 of Act I. of 1868, which provides that the repeal of any Act or Regulation shall not affect any offence committed before the repealing Act shall have come into operation, not being applicable.—EMPRESS v. DILJOUR MISSER, I. L. R., 8 Cal. 225. [Garth, Cl., and Kemp, Macpherson, Markby, and Ainslie, JJ. Feb. 20, 1877.]

Where a jury found an accused person guilty of murder, but refused to convict him, because there had been no eye-witnesses of his crime, and on a second charge from the Judge refused to find him guilty at all, held by the High Court, to whom the case was referred, that the Judge ought to have explained to the jury that the testimony of eye-witnesses was not necessary to the establishment of a charge of murder, and that the jury, if they had no doubt of the guilt of the accused, were bound to give effect to the conclusion at which they had arrived.—QUEEN v. GOKOOL KAHAR, 25 W. R. 36. [Ainslie and Mitter,]]. April 28, 1877.]

The provocation contemplated by s. 300 of the Penal Code should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation.—Empress v. Khogayi, I. L. R., 2 Mad. 122. [Innes and Muttubami Ayyar, JJ. Jan. 22, 1878.]

Up to the 1st January 1862, a person committing the offence of murder was liable to trial and punishment under the Regulations. By Act XVII. of 1862, the Regulations prescribing punishments for offences were repealed, "except as to any offence committed before the 1st January 1862." By the same Act, it was declared that no person who should claim the same should be deprived of any right of appeal or reference which he would have enjoyed under such Regulations. By s. 6 of Act I. of 1868, the repeal of an Act does not affect anything done, or any offence committed, or any fine or penalty incurred before the repealing Act shall have come into operation. Under the provisions of this section the repeal of Act VII. of 1862 by Act VIII. of 1868 and Act X. of 1872 did not, in respect of offences committed before the 1st January 1862, affect the penalties prescribed by such Regulations, nor were any of the Regulations prescribing punishments for offences, which were in force before the passing of Act XVII. of 1862, repealed in respect of oftences committed before the 1st January 1862, prior to the passing of Act I. of 1868. Held accordingly, where a person committed murder in the year 1855, that such person was punishable under the Regulations. Held also that, inasmuch as such right as the right of reference given by s. 3 of Reg. IV. of 1707 accrues on conviction, and therefore in the present case had not accrued before Act XVII. of 1862 was repealed, it is doubtful whether a person convicted of murder committed before the 1st January 1862 has such right.— EMPRESS v. MULUA, I. L. R., 1 All. 599. [Turner and Spankie, JJ. Feb. 15, 1878.]

THE appellant, having armed himself with a sword, struck in the dark at certain persons in a house, causing wounds which resulted in the death of one person. Held per lackson, J.—That such conduct raises an inference that he intended to cause death. Per Ainslie, J .- That, though he probably did not see how his blows were directed, as he struck them with a deadly weapon regardless of consequences, he must have known that his act is so imminently dangerous that it must, in all probability, cause such bodily injury as was likely to cause death. Per Cunningham, J.—That the offence was culpable homicide, and not murder, being an unpremeditated act of reckless violence rather than an act done with the knowledge or intention which is essential to constitute murder.—IN THE MATTER of Brjadhur Rai, 2 C. L. R. 211. [Jackson, Ainslie, and Cunningham, JJ. April 1, 1878.]

WRERE the condition of the convict rendered it likely that, if he were hanged, decapitation would ensue, the sentence of death was commuted to one of transportation for life.—In the Matter of Boodhoo Jolaha, 2 C. L. R. 215. [Markby and Prinsep, J]. April 15 1878.]

IF a body of men armed with lathis, and under the leadership of one who, to the knowledge of the rest, is armed with a gun, assemble for the purpose of forcibly carrying of another man's property, and if, in effecting that purpose, any one of the party, taking

the gun, shoots and kills a person who is making a lawful resistance, the whole party may properly be convicted of murder under s. 149 of the Penal Code. HARI SINGH v. EMPRESS, 3 C. L. R. 49. [Jackson, Mitter, and Maclean,]]. June 4, 1878.]

L, C, K, AND D, conspired to kill S. In pursuance of such conspiracy, L first, and then C, struck S on the head with a lathi, and S fell to the ground. While S was lying on the ground, K and D struck him on the head with their lathis. Held (Stuart, C.J. dissenting) that, inasmuch as K and D did not commence the attack on S, and it was doubtful whether S was not dead when they struck him, transpertation for life was an adequate punishment for their offence. Observations by Stuart, C.J., on the impropriety of a judicial officer adding a "note" to his judgment in a criminal case impugning the correctness of the conclusion he has arrived at on the evidence in such case.—Empress P. Chattar Singh, I. L. R., 2 All. 33. [Stuart, C.J., and Pearson and Oldfield, J]. Aug. 15, 1878.]

In the course of a serious riot one S was killed by a shot from a gun. The first prisoner and others were charged with murder. The Sessions Judge, believing the statement of the first prisoner and his witnesses that he had fired in self-defence, acquitted him of the Upon a petition presented by the widow of the deceased praying the Court to exercise their powers of revision, held, 1st, that, under the provisions of sa297 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 439 of the new Code of Criminal Procedure (Act X. of 1882), the High Court may exercise its powers of revision upon information in whatever way received; 2ndly, that it was not intended by the Legislature that the powers given by cl. 1 of s 297 should be exercised only in the particular instances of error, and in the particular manner given in the succeeding clauses, which are merely intended to show the particular course which may be taken in those particular instances of error; 3rdly, that it is not a ground for revision by the High Court that all the evidence for the prosecution which might have been brought before the Sessions Judge has not been brought before him; 4thly, that the words 'material error' in that section cannot be held to include error in the appreciation of evidence; 5thly, that, under the 1st clause of s. 297. the High Court cannot set aside findings of fact except in case of an appeal from a conviction.-In the Matter of Aurokiam, I. L. R., 2 Mad. 28. [Innes, Offg. C.], and Muttusami Ayyar, J. Oct. 25, 1878.]

S. 304 A of the Penal Code does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely, by such act, to cause the actual result; and, if such knowledge can be imputed, the result is not to be attributed to mere rashness; if it cannot be imputed, still the wilful offence does not take the character of rashness, because its consequences have been unfortunate. Acts probably or possibly involving danger to others, but which in themselves are not offences, may be offences under s. 336, 337, 333, or 304A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge or means of knowledge of the offender, and placed in their appropriate place in the class of offences of the same character.—Empress v. Ketabli Mundul, I. L. R.; 4 Cal. 764; 2 C. L. R. 507. [Ainslie and Broughton, JJ. Feb. 26, 1879.]

HELD (Stuart, C. J., dissenting) that a Native Indian subject of Her Majesty, being a soldier in Her Majesty's Indian army, who committed a murder in Cyprus while on service in such army, and who was accused of such offence at Agra, might, under s. 9 of A& XI. of 1872, be dealt with in respect of such offence by the Criminal Courts at Agra, Cyprus being a "Native State" in reference to Native Indian subjects of Her Majesty within the meaning of that Act. Per Stuart, C. J.—The power of the Governor-General of India in Council to make laws for the trial and punishment in British India of offences committed by British Indian subjects in British territories other than British India discussed. A Division Court of the High Court ordered the Magistrate (who had refused to inquire in a charge of murder on the ground that he had no jurisdiction) to inquire into such charge, considering that the Magistrate had jurisdiction to make such inquiry. The Magistrate inquired into the charge, and committed the accused person for trial. The Court of Session convicted the accused person on the charge, and sentenced him to The proceedings of the Court of Session having been referred to the High Court for confirmation of the sentence, the case came before the Full Court. Held per Styart. C. J., Spankie, J., and Oldfield, J., that, in determining whether such sentence should be confirmed, the Full Court was not precluded by the order of the Division Court from

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considering whether the accused person had been convicted by a Court of competent jurisdiction .- EMPRESS v. SARMUKH SINGH, I. L. R., 2 All. 218. [Stuart, C.J., and Pearson, Spankie, and Oldfield, JJ. Mar. 28, 1879.]

WHERE an accused was charged with culpable homicide, and the evidence showed that the deceased had an enlarged spleen, and that his death was caused by rupture of the spleen occasioned by blows inflicted by the accused on the body of the deceased, held that it was not sufficient, in order to find the accused guilty of a rash act under s. 304A of the Penal Code, that the jury should be satisfied only of the prevalence of the disease of enlargement of the spleen in the district, and infer therefrom criminal rashness in beating the deceased; but that they should also be satisfied that the accused was aware of the prevalence of such disease in the district, and also aware of the risk to life involved in striking a person afflicted with that disease.—Empress v. Safatulla, I. L. R., 4 Cal. 815. Morris and White, JJ. Mar. 31, 1879.]

EXCEP. 5 to s. 300 refers to cases where a man consents to submit to the doing of some particular act, either knowing that it will certainly cause death, or that death will be the likely result; but it does not refer to the running of a risk of death from something which a man intends to avert if he possibly can do so, even by causing the death of the person from whom the danger is to be anticipated. Per Broughton, J.-Excep. 5 to s. 300 is not applicable to the case of a premeditated fight, but points to a case of a different character, such as suttee.—Empress v. Rohimuddin (No. 1), Nazir Mahomed (No. 2), AND SOMIRUDDIN (No. 3), I. L. R., 5 Cal. 31; 4 C. L. R. 285. [Ainslie and Broughton, JJ. April 22, 1879.] Contra, Samshere Khan v. Empress, 7 C. L. R. 158; I. L. R., 6 Cal. 154, infra.

WHERE death results in fight between two bodies of men deliberately fighting together, a greater proportion of the men composing both sides being armed with deadly weapons, and it being further apparent from the evidence that the man slain was an adult, and that no unfair advantage was taken by the one side or the other during the fight, the offence committed is culpable homicide, but does not amount to murder.—Samskere KHAN v. EMPRESS, I. L. R., 6 Cal. 154; 7 C. L. R. 158. [White and Field, JJ. July 31 1880]. Contra, Empress v. Rohimuddin, I. L. R., 5 Cal. 31; 4 C. L. R. 285, supra.

A HEAD-CONSTABLE, making an investigation into a case of house-breaking and theft, searched the tents of certain gipsies for the stolen property, but discovered nothing. After he had completed the search, the gipsies gave him a certain sum of money, which he accepted, but at the same time, not deeming it sufficient, he demanded a further sum from them. They refused to give anything more, on the ground that they were poor, and had no more to give. Thereupon he unlawfully ordered one of them to be bound and taken away. On his subordinates proceeding to execute such order, all the gipsies in the camp, men, women, and children, turned out, some four or five of the men being armed with sticks and stones, and advanced in a threatening manner towards the place such gipsy was being bound and the head-constable was standing Before any actual violence was used by the crowd of advancing gipsies, the head-constable fired with a gun at such crowd, when it was about five paces from him, and killed one of the gipsies, and, having done so, ran away. Any apprehension that death or grievous hurt would be the consequence of the acts of such crowd would have ceased had he released the gipsy he had unlawfully artested, and withdrawn himself and his subordinates, or had he effected his escape. Held that such head-constable had not a right of private defence against the acts of such gipsies, as those acts did not reasonably cause the apprehension that death or grievous hurt would be their consequence, and such head-constable was guilty of culpable homicide amounting to murder. - EMPRESS v. ABDUL HAKIM, I. L. R., 3 All. 253. [Pearson and Straight,]]. Oct. 5, 1880.]

THE mere fact that the body of the murdered person has not been found is not a ground for refusing to convict the accused person of the murder.—EMPRESS v. BHAGIRATH, I. L. L., 3 All. 383. [Pearson and Straight, JJ. Dec. 24, 1880.]

WHERE the accused was, on a cry of "thief" being raised against him, pursued by certain private persons, in whose view he had not committed any non-bailable or cognizable offence, whereupon he turned and shot dead one of his pursuers who was on the point of seizing him, held that the offence was one of culpable homicide not amounting to murder, as the accused, although he was entitled to resist the attempt of his pursuers to capture him in the exercise of his right of private defence, had exceeded the power given him by law when he caused the death of the person against whom he was exercising that

right, but without an intention of doing more harm than was necessary for the purpose of defence. Held further, that the accused must be taken to have acted with the intention of causing such bodily injury as was likely to cause death, though homony have intended specifically to cause death, and was, therefore, guilty of culpable homicide in the greater degree.—Emphess v. Sher Baz, Panj. Rec., No. 1 of 1880.

A WOMAN who, with her infant child, eloped from her husband's house, was afterwards arrested on a charge of murdering the child which was missing. She made three different statements: (1) that she had left it with her husband; (2) that she had been enticed away by one R, who had taken the child from her; (3) that one H had drowned the child. The Sessions judge believed the last statement, and convicted her under s. 201 of the Penal Code. Held that the conviction was wrong, and must be set aside. S. 201 of the Penal Code does not apply to a case where the person, who is the probable or possible offender, makes statements exculpating himself by inculpating another.—In the Matter of Bahala Bibi; Empress v. Brhala Bibi, I. L. R., 6 Cal. 789; 8 C. L. R. 207. [Postifer and Field, J]. Mar. 7, 1881.]

A PRISONER was charged with "causing the death of A by inflicting a wound on him with a 'chheni' with the intention of causing bodily injury, such as was sufficient, in the course of nature, to cause death, or which he knew to be likely to cause death." Held that the charge was defective and inexact as regarded the second and third clauses of the definition of murder in s. 300 of the Penal Code. With reference to the second clause, it should have run "likely to cause the death of A, the person to whom the harm was caused." With reference to the third clause, it should have said "ordinary course of nature."—REPRESS V. SAMIRUDDIN, I. L. R., 8 Cal. 211. [Pontifex and Field, J]. Dec. 14, 1881.]

P, ACCUSED of the murder of a girl, gave to a police-officer a knife, saying it was the weapon with which he had committed the murder. He also said that he had thrown down the girl's anklets at the scene of the murder, and would point them out. On the following day, he accompanied the police-officer to the place where the girl's body had been found, and pointed out the anklets. Held that such statements, being confessions made to a police-officer, whereby no fact was discovered, could not be proved against P. Observations on the use of confessions made to police-officers. Reg. v. Yora Hasji (11 Boss. H. C. R. 242) and Empress v. Ramabirapa (I. L. R., 3 Bom. 12) referred to.—Empress v. H. Pancham, I. L. R., 4 All. 198. [Stuart, C.J., and Straight, J. Jan. 10, 1882.]

Where a prisoner is constructively guilty of murder under s. 34 of the Penal Code, it is doubtful if he can be said to have committed the offence of murder within the ssessing of s. 149, so as to make other prisoners, by a double construction, guilty of murder.—IN THE MATTER OF JHUBBOO MAHTON; EMPRESS v. JHUBBOO MAHTON, I. L. R., 8 Cst. 739; 12 C. L. R. 233. [McDonell and Field, JJ. April 28, 1882.]

An accused, who was charged with murder, not being found, the witnesses were examined under s. 327 of Act X. of 1872/corresponding with s. 512 of Act X. of 1882) in his absence. The accused was subsequently arrested, and committed on the strength of the evidence taken in his absence. Before the Sessions Court he pleaded not guilty. Hold that the prisoner having been put upon his trial, and having pleaded, the commitment could not be quashed. Held that, if, in course of a trial, the Sessions Judge should be of opinion that the prosecution has not laid a proper basis for the reception of evidence in the absence of the accused, his proper course is to adjourn the trial under s. 264 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 344 of the new Code of Criminal Procedure (Act X. of 1882), and then, under s. 351 of Act X. of 1872/corresponding with s. 540 of Act X. of 1882), summon such witnesses as he may deem material. Semble.—The mere absence of questions in the record of a prisoner's statement does not render it inadmissible.—Empress v. Sagambur, 12 C. L. R. 120. [McDodeil and O'Kinealy, JJ. • Aug. 10, 1882.]

A was tried on a charge (1) of murder, (2) of abetting B to commit the said murder. The jury, having considered their verdict, were asked by the Clerk of the Crown if they were agreed. The foreman replied that they were, and that their verdict was guilty, and, when further asked, he said, "Guilty of abetment—of abetment generally." On the application of counsel for the prosecution a charge was then added of "abetment of murder committed by some person or persons unknown." The additional charge was read about to the jury, but was not specially explained to the prisoner, nor was he called upon to piece to it. Counsel for the prisoner was asked by the Judge if he desired to have a new trial on the charge as amended, but he declined. The three charges (i. e., the two original

charges and the additional charge) were then read to the jury, who, after deliberation, reterned a verdit of "not guilty" on charges Nos. 1 and 2, and of "guilty" on charge No. 3, vis., of abetment of murder by a certain person or persons unknown. On the application of counsel for the prisoner the following points were reserved: (1) whether, under the circumstances, the Court had power to add a new charge; (2) whether the verdict returned on the new charge was valid, the prisoner not having been called on to plead to it. Held (Scott, J., diss.) that the Judge was wrong in framing a new charge in addition to the ori-ginal charges. The error, however, was one of form, and not of substance, and under s. 537 of the Criminal Procedure Code (Act X. of 1882), the Court declined to interfere with the conviction. Held also that the power exercised by a Court sitting as a Court to decide mestions of law reserved in criminal cases under s. 434 of the Criminal Procedure Code (Act X. of 1882) is the power of review, and the Court is a Court of Reference and Revision. Held also that, having regard to ss. 228, 229, and 230 of the Criminal Procedure Code, the charge of abetment of murder by B might have been changed into one of abetmens generally. Held also that, in any case, the conviction was good under ss. 236 and 237 of the Criminal Procedure Code. It was doubtful whether the evidence would estabhish the offence of murder, abetment of murder by B, or abetment of murder by some one maknown. Even if there had been no charge properly framed, the Judge might, under s. 277. have accepted the verdict returned by the jury, and entered it on the record. The fact 237, have accepted the verdict returned by the jury, and entered it on the record. that the Judge framed a charge which, ex hypothesi, was beyond his authority, and accepted a verdict on that charge, did not affect the legality of the conviction. Held that the omission to read and explain the charge to the prisoner did not, under the circumstances, pre-judice the prisoner, and was therefore immaterial. In the Criminal Procedure Code gene-rally the word "charge" is used as the statement of a specific offence, and not as indicating the entire series of offences of which a prisoner is accused. There is nothing in the Code to indicate that the word is to have a different construction in ss. 226 and 227 from what it has in other sections. The words "without a charge" in s. 226 of the Criminal Procedure Code (Act X. of 1882) will properly apply, not only to a case in which there is no charge at all, but also to a case in which there is no charge of such an offence as the Sessions Judge or Clerk of the Crown may think the prisoner ought to be tried for. If the word "alter" in s. 227 is to be taken to include "addition," as it does in s. 226, the addition permitted must be an addition to some specific charge in the nature of an alteration, and not the addition of a new charge. The words "return of the verdict" in s. 227 mean the return of the final verdict which the Judge is bound to record. Where, on the application of counsel for the prisoner, a question of law has been reserved for the decision of the Court under s. 434 of the Criminal Procedure Code (Act X. of 1882), the prisoner's counsel has the right to begin. Per Scott, J.—The test of the admissibility of proposed amendments to a charge is whether such amendment will prejudice the prisoner. The word "charge" is used in the Code both as indicating the whole series of counts or heads of charge, and also as indicating a charge of one specific offence. In s. 227 it is used in the former sense. The word "alter" in s. 227 must be taken to be equivalent to the words "add to or otherwise alter," which are used in s. 226; and consequently the addition of a new "head of charge" is an alteration within the meaning of s. 227.— Queen-Empress v. Appa Subhana, I. L. R., 8 Bom. 200. [Sargent, C.J., and Bayley and Scott, JJ. Feb. 19, 1884.]

Upon the trial of A for murder, and B for abetment thereof, a confession by A implicating B cannot be taken into consideration against B under s. 30 of the Evidence Act, 1872.—BADI v. QUEEN-EMPRESS, I. L. R., 7 Mad. 579. [Kernan and Hutchins, J]. July 30, 1884.]

In a trial upon a charge of murder, it appeared that the deceased, shortly before her death, was questioned by various persons as to the circumstances in which the injuries had been inflicted on her, and that she was at that time unable to speak, but was conscious and able to make signs. Evidence was offered by the prosecution, and admitted by the Sessions Judge, to prove the questions put to the deceased and the signs made by her in answer to such questions. Held by the Full Bench (Mahmood, J., dissenting) that the questions of the such questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) that the questions is the full bench (Mahmood, J., dissenting) the full bench (Mahmood, J., d tions and the signs taken together might properly be regarded as "verbal statements" made by a person as to the cause of her death within the meaning of s, 32 of the Evidence Act, and were, therefore, admissible in evidence under that section. Per Straight, J., that statements by the witnesses as to their impression of what the signs meant were inadmissible and should be eliminated; but that, assuming that the questions put to the deceased were responded to by her in such a manner as to leave no doubt in the mind of the Court as to her meaning, it was not straining the construction to hold that the circumstances

were covered by s. 32. Per Mahmood, J., that the expression "verbal statements" in s. 32 should be confined to statements made by means of a word or words, and that the signs made by the deceased, not being verbal statements in this sense, were not admissible in evidence under that section. Per Petheram, C.J., that the signs could not be proved as "conduct" within the meaning of s. 8 of the Evidence Act, inasmuch as, taken alone, and without reference to the questions leading to them, there was nothing to connect them with the cause of death, and so to make them relevant; while the questions could not be proved either under expl. 2 of s. 8 or under s. 9, inasmuch as the condition precedent to their admissibility under either of these provisions was the relevancy of the conduct which they were alleged to affect, or of the facts which they were intended to explain. The " conduct " made relevant by s. 8 is conduct which is directly and immediately influenced by a fact in issue or relevant fact, and it does not include actions resulting from some intermediate cause, such as questions or suggestions by other persons. Per Mahmood,]., that the word "conduct" as used in s. 8 does not mean only such conduct as is directly and many mediately influenced by a fact in issue or relevant fact; that the signs made by the decree were the conduct of "a person an offence against whom was the subject of any proceedag," and were relevant as such under s. 8; and that the questions put to her were admissible in evidence, either under expl. 2 of the same section, or under s. 9, by way of an explanation of the meaning of the signs.—QUEEN-EMPRESS v. ABDULLAH, I. L. R., 7 Alle 385. [Patheram, C.J., and Straight, Oldfield, Brodhurst, and Mahmood, J]. Feb. 27, 1885.]

An accused person, in answer to a charge of murder, stated that he had killed his wife, but that he had done so in consequence of his having discovered her in an act of adulary on the previous day. Held that such a statement did not amount to a plea of guilty on the charge, and that it was the duty of the Court to try whether the provocation therein disclosed was sufficiently grave and sudden to reduce the offence.—NETAL LUSKAR O. QUEEN-EMPRESS, I. L. R., 11 Cal. 410. [Field and Beverley, J]. Mar. 25, 1885.]

No judicial officer dealing with the provisions of s. 27 of Act I. of 1872 should allow one word more to be deposed to by a police officer, detailing a statement made to him by an accused, in consequence of which he discovered a fact, than is absolutely necessary to show how the fact that was discovered is connected with the accused, so as, in itselfeto be a relevant fact against him. S. 27 was not intended to let in a confession generally, but only such particular part of it as set the person to whom it was made in motion, and led to his ascertaining the fact or facts of which he gives evidence. Queen Empress v. Pancham (l. L. R., 4 All. 198) and Queen-Empress v. Babu Lall (l. L. R., 6 All. 509) discussed and commented on. Thus, when a police-officer deposed that an accused had told him that he had robbed K of Rs. 48, whereof he had spent Rs. 8, and had got Rs. 40, and that he had made over Rs. 40 to him, held that the statement that he had robbed K of Rs. 48 was not necessarily preliminary to the surrender of the Rs. 40, and was inadmissible in evidence against him. When also a police-officer deposed to the fact that the accused, who was charged with murder, had stated to him that he and K had stelen some hides from C, and, upon such statement, he had sent for C, and recorded his information, and when it appeared that C had already informed the police of the fact of the theft, though the witness was not aware of it, held that the statement was inadmissible upon the ground that it would be most dangerous to extend the provisions of s. 27, and allow a police-officer, who is investigating a case, to prove an information received from a person accused of an offence in the custody of a police-officer, on the ground that & material fact was thereby discovered by him, when that fact was already known to another police-officer. Although, under some circumstances a charge of murder may be sustained, when the body of the person said to have been murdered is not forthdenting; still, when that is the case, the strongest possible evidence as to the fact of the mander should be insisted on before an accused is convicted. When an accused charged with murder was alleged to have taken a boat from a place where it had been secured by its owner, and after proceeding some distance in it had abandoned it, and when he was charged with the theft of the boat, held that the charge was unsustainable, inasmuch as it was evidently not his intention to convert it to his own use, and make it permanently his own property, but merely to make use of it for the purpose of aiding him in escap -Adu Shikdar v. Queen-Empress, I. L. R., 11 Cal. 635. [Mitter and Norris,]]. May 29, 1885.]

L AND N were tried by a Sessions Court on charges of dacoity and murder. The jury returned a verdict of guilty on both charges. The Judge, contrary to the provision of s. 269 of the Code of Criminal Procedure, treated the jury as assessors in respect of the charge of murder, and, convicting L and N of dacoity, acquitted them of murder. How

that the irregular procedure of the Judge could not deprive the verdict of the jury of its proper legal effect.—Queen-Empress v. Lakshmana, 1. L. R., 9 Mad. 42. [Muttusami Ayyar and Hutchins, JJ. Aug. 27, 1885.]

HELD that the Island of Perim, having been occupied with a view to its permanent retention by officers of the Government of Bombay, became a part of British India within the definition of Stat. 21 and 22 Vic., c. 106, and vested in Her Majesty along with the other Indian territories under that Act, which became law on 2nd September 1858. The Penal Code (Act XLV. of 1860) and the Code of Criminal Procedure (Act X. of 1882) extend in their entirety to the whole of British India, and therefore to the Island of Perim. 8.7 of the Criminal Procedure Code (Act X. of 1882) gives to the Local Government the power to alter the local limits of Sessions Divisions, and continues the Divisions existing when that Code came into force. A notification was issued by the Government of Bombay on the 6th May 1884 under the above section, including the Island of Perim within the Sessions Division or District of Aden, and empowering the officer from time to time commanding the troops stationed at Perim, in virtue of his office, to exercise the powers of a Magistrate of the second class within the Island, and to commit persons for trial to the Court of Session at Aden. Held, having regard to the language of Act II. of 1864, that, for the purposes of s. 7 of the Criminal Procedure Code (Act X. of 1882), the Resident's Court at Aden might be considered as a Court of Session, and that the local area to which Act II. of 1864 applied was the Sessions Division which was in existence at the date of the above notification when the limits thereof were altered by the inclusion of the Island of Perim. A prisoner charged with having committed murder in the Island of Perim was committed by the Magistrate at Perim to be tried before the Political Resident at Aden. Having been found guilty and sentenced to death, he appealed to the High Court of Bombay. By the Aden Act (II of 1864), s. 29, it is provided that "no appeal shall lie from an order or sentence passed by the Resident in any criminal case." The High Court, however, admitted the appeal, being doubtful as to whether the above provision applied to cases arising in the Island of Perim.—QUEEN-EMPRESS v. MANGAL TEKCHAND, I. L. R., 10 Bom. 258. Birdwood and [ardine,]]. Dec. 6, 1885.

S. 84 of the Penal Code lays down the legal test of responsibility in cases of alleged unsoundness of mind. It is by this test, as distinguished from the medical test, that the criminality of an act is to be determined. The accused killed his two young children with a hatchet. The reason given for the crime was that, while he was laid up with fever, the crying of the children annoyed him. It was alleged that the fever had made him irritable and sensitive to sound, but it did not appear that he was delirious at the time of perpetrating the crime. There was no attempt at concealment, and the accused made a full confession. Held that, as the accused was conscious of the nature of his act, he must be presumed to have been conscious of its criminality. He was, therefore, guilty of murder.

—QUEEN-EMPRESS v. LAKSHMAN DAGDU, I. L. R., 10 Bom. 512, [Birdwood and Jardine, J]. Mar. 4, 1886.]

THE High Court cannot, under s. 526 of the Criminal Procedure Code (Act X. of 1882), any more than under s. 25 of the Civil Procedure Code (Act XIV. of 1882), direct the transfer of a case, which is not properly before a Subordinate Court of competent jurisdiction to receive and try it. Peary Lall Mosoomdar v. Komul Kishore Dassi (I. L. R., 6 Cal. 30) followed. Queen-Empress v. Thaku (I L. R., 8 Bom. 312) distinguished. Under s. 5 of the Scheduled Districts A& (XIV. of 1874), the Local Government cannot, by extending an Act which is of necessarily restricted application, make its provisions applicable to an entirely new subject-matter, vis., the litigation of a new local area. Accardingly, where the Government of Bombay issued the following notification, No 823 of 1886: "In exercise of the powers conferred by s. 5 of the Scheduled Districts Act (XIV. of 1874), the Governor of Bombay in Council is pleased, with the previous sanction of the President in Council, to extend to the Island of Perim the whole of Act II, of 1864 of the The Governor in Governor-General in Council, with the exception of ss. 2, 17, and 23. Council is further pleased, in exercise of the powers conferred by s. 6 of the Scheduled Districts Act (XIV. of 1874), and by any other enactment, to direct that the Resident at Adea shall be Sessions Judge and Court of Session for the Island of Perim, and shall exercise the same jurisdiction and powers in respect of the administration of civil and criminal justice in the said island, and in respect of the trial of persons committed for trial by the Court of Session for offences committed in the said island as are vested in him in Aden by the mid Act." Held that the provisions of the Aden Act (II. of 1864), which (as appears from the preamble) deals with the litigation of Aden alone, could not be extended to Perim 'without enlarging the subject-matter of the Act. Held also that the appointment of the

Political Resident at Aden as a Sessions Judge and Court of Session for the Island of Perim, made under cl. a of s. 6 of the Scheduled Districts Act (XIV. of 1874), was valid and effectual with reference only to the provisions of the Criminal Procedure Code, and that that portion of the notification which regulates the exercise by the Resident of his powers with reference to Act II. of 1864 should be treated as surplusage. A prisoner charged with having committed murder at Perim was committed by the Magistrate there on the 26th August 1885 for trial before the Political Resident at Aden, by whom he was convicted and sentenced to death on the 14th September 1885. On the 25th January 1886, the High Court of Bombay reversed the conviction and sentence, on the ground that the Court of the Resident had no jurisdiction over the Island of Perim, and that the Resident, not having been appointed a Judge of a Court of Session for that island, was not competent to try the The High Court ordered a re-trial before a competent Court. On the 10th February 1886, the Government of Bombay issued the notification (No. 823) above set forth, On the 11th March 1866, an application was made to the High Court of Bombay for the transfer of the case to another Court of Session or to the High Court for trial. Held hat Perim is a Sessions Division, and that, after the establishment, under the Code of Criminal Procedure, of a Court of Session for the Perim Sessions Division and the appointment of the Resident at Aden as Sessions Judge of that Court, the accused stood properly committed to a Court of Session. The High Court, therefore, could transfer the case from that Court, under s. 526 of the Code, to any other Court of equal or superior jurisdiction, or to the High Court of Bombay. Per Jardine, J .- After the High Court had annulled the proceedings in the Court of the Resident at Aden as without jurisdiction, the case could not be treated as still pending in his Court; and, as there was no Court of Session in existence at the time of the commitment, it necessarily followed that the case remained in the Magistrate's Court. But, whether the case was considered as pending in the Court of a Magistrate, or of a Resident, or of a Sessions Judge, the High Court has the power to transfer it, and that, under the circumstances, the case should be so transferred to the High Court for trial.—QUEEN-EMPRESS v. MANGAL TEKCHAND, I. L. R., 10 Bom. 274. [Birdwood and Jardine, JJ. Mar. 11, 1886.]

UPON the trial of a person charged with the murder of his wife, it was proved that the accused had entertained well-founded suspicions that his wife had formed a criminal intimacy with another person; that one night the deceased, thinking that her huband was asleep, stealthily left his side; and the accused took up an axe and followed her, found her in conversation with her paramour in a public place, and immediately killed her. Held that the act of the accused constituted the crime of murder, the facts not showing "grave and sudden provocation" within the meaning of s. 300, excep. I, of the Penal Code, so as to reduce the offence to culpable homicide not amounting to murder. Queen-Empres v. Damarua (Weekly Notes. 1885, p. 197) distinguished by Straight, Offg. C.J.—QUEEN-EMPRESS v. MOHAN, I. L. R., 8 All. 622. [Straight, Offg. C.J., and Brodhurst, J. June 26, 1886.]

An accused person was convicted of culpable homicide not amounting to murder in respect of the widow of his cousin, who lived with him. The evidence showed that the accused was seen to follow the deceased for a considerable distance with a gandasa we chopper, under circumstances which indicated a belief on his part that she was going to keep an assignation, and with the purpose of detecting her in doing so. He found her in the act of connection with her paramour, and killed her with the chopper. Held that the conviction must be altered to one of murder, as the accused went deliberately in search of the provocation sought to be made the mitigation of his offence, and, under the circumstances disclosed, it could not be said that he was deprived of self-control by grave and sudden provocation. Queen-Empress v. Damarua (Weekly Notes, 1885, p. 107) and Queen-Empress v. Mohan (I. L. R., 8 All. 622) referred to.—QUEEN-EMPRESS v. LOCHAN, I. L. R., 8 All. 635. [Straight, Offg. C. J., and Mahmood, J. Aug. 2, 1886.]

At a trial before a Sessions Court, a charge was read out to the prisoners to the effect that they, at a certain place, on a certain date, committed murder by causing the death of M, and that they had thereby committed an offence punishable under s. 302 of the Penal Code, and within the cognizance of the Court of Session. The prisoners pleaded guilty, and were convicted on their plea. The charge was not explained to the prisoners. In answer to questions put by the Court, prisoners stated that they had killed M, and that they made the admissions of their own accord, and not on the persuasion of any one. Held that the conviction must be quashed, and a new trial ordered.—Alyand w. Queen-Emperss, I. L. R., 9 Mad. 61. [Muttusami Ayyar and Hutchins, JJ. Aug. 27, 1886.]

THE accused stabbed a child (his brother's wife) with a sword and killed her. He was charged with marder, and plea of insanity was set up at the trial. No motive could be assigned for his attack on the child, in which he persisted in the presence of other persons; and it appeared that he had been in the habit of treating the child kindly and affectionate-He was suffering from fever and want of food at the time, and the medical evidence wed it was possible that the act was committed under a sudden attack of homicidal masia. It was in evidence that he had abused some of his relations a short time before, the abuse being probably due to irritability of mind caused by fever. He confessed the crime to the Village-Magistrate, and answered questions put to him rationally, but before the committing Magistrate and the Sessions Judge he denied that he had killed the child. He was convicted of murder. Held that, as the accused was not proved to have been, by reason of unsoundness of mind, incapable of knowing the nature of his act, or that he was doing what was wrong or contrary to law, the conviction was right. Queen-Empress v. Lakshman Dagdu (I. L. R., 10 Bom. 512) approved.—Queen-Empress v. Venkatasami, I. L. R., 12 Mad. 459. [Collins, C]., and Muttusami Ayyar, JJ. April 15, 1889.]

WHERE a prisoner was convicted of murder on a confession retracted at the trial, corroborated by depositions read under s. 288 of the Code of Criminal Procedure, and also retracted at the trial, held that the prisoner should not have been convicted on such evi-MCa.—QUEEN-EMPRESS v. BHARMAPPA, I. L. R., 12 Mad. 123. [Collins, C.J., and Parker, Oct. 24, 1888.]

THE accused, who was a habitual gánjá-smoker, was charged with the murder of his wife and infant son. In his confession he stated that he had killed his wife, because she quarelled with him, and objected to go to another village, when he proposed a change of house on account of their poverty. He adhered to this statement when placed for trial before the Court of Session. The Sessions Judge treated this statement as a plea of guilty on the charge of murder, convicted the accused, and sentenced him to death, subject to confirmation by the High Court. Held (per Jardine and Candy, JJ.) that the accused's statement did not amount to a plea of guilty on the charge of murdering his wife. He alleged a sudden provocation; he ought, therefore, to have been put on his trial, in order that the Court might ascertain whether the provocation was grave and sudden enough to prevent the offence from amounting to murder. *Held (per Birdwood and Jardine, JJ.)* that, anless the accused's habit of smoking gánjá had induced in him such a diseased state mind as to make him incapable of knowing the nature of his act or its criminality, s. 84 of the Indian Penal Code did not apply in his favour. Queen-Empress v. Lakshman Bagdu (I. L. R., 10 Bom. 512) distinguished.—QUEEN-EMPRESS v. SAKHARAM VALAD RAMJI, I. L. R., 14 Bom. 564. [Birdwood, Jardine, and Candy, JJ. Feb. 25, 1890.]

Tag accused struck the deceased three blows on the head with a stick with the intention killing him. The deceased fell down senseless on the ground. The accused, believing that he was dead, set fire to the hut in which he was lying, with a view to remove all evidence of the crime. The medical evidence showed that the blows struck by the accused were not likely to cause death, and did not cause death, and that death was really caused by injuries from burning when the accused set fire to the hut. Held (Parsons, J., discenting) that the accused was guilty of attempt to murder under s. 307 of the Penal Cods. Per Parsons, J.—The accused was guilty of murder under s. 302 of the Penal Code.—Quren-Empress v. Khandu, I. L. R., 15 Bom. 194. [Sargent, C.J., and Birdwood ##d Parsons, JJ. Sep. 23, 1890.]

💲 511 of the Indian Penal Code does not apply to attempts to commit murder, which are fully and exclusively provided for by s. 307 of the said Act. A person is criminally preparable for an attempt to commit murder when, with the intention or knowledge requisite to its commission, he has done the last proximate act necessary to constitute the completed offence, and when the completion of the offence is only prevented by some cause independent of his volition.—QUEEN-EMPRESS v. NIDDHA, I. L. R., 14 All. 38. [Straight, J. Aug. 5, 1891.]

inhment for murder by

808. Whoever, being under sentence of trans- Ct. of Ses. portation for life, commits murder, shall be punished Warrant with death.

EVERY person, whether within or without the presidency-towns, aware of the commis- Not comp. see of, or of the intention of any other person to commit, any offence punishable under 2. 302 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-efficer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

Not bailable.

[P. C. 36]

Where a person under sentence of transportation for life on a conviction for murder is found guiky of murder on a subsequent and different charge, the only sentence that can be passed on him according to s. 303, Penal Code, is that of death.—Queen v. Doorjodhun Shamonto alias Deejobor, 19 W. R. 45. [Kemp and Glover, J]. Mar. 15, 1873.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

804. Whoever commits culpable homicide not amounting to murder shall Punishment for culpable ho- be punished with transportation for life, or imprisonmicide not amounting to mur-ment of either description for a term which may extend to ten years, and shall also be liable to fine, if der. the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death) or with imprisonment of either description for a term which may extend to ten years, or with fire, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily in any as is likely to cause death.

pable homicide not amounting to murder, by causing the death of and thereby committed an offence punishable under s. 304 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].-Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXVIII. (II.).

EVERY person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 304 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

THE two prisoners having confessed that, having caught the deceased in the act of having sexual intercourse with the wife of one of them, they then and there killed him. Held that the very grave provocation given to them was such as to reduce their crime from murder to culpable homicide not amounting to murder, -QUEEN v. GOUR CHENDER POLIE, I W. R. 17. [Kemp and Glover, JJ. Sep. 26, 1864.]

To convict a prisoner of being a member of an unlawful assembly and of culpable homicide not amounting to murder, it must be shown that he had an illegal object in common with, and took part in the illegal act done by, the others. -In re Foiz All alias IMDAD ALI, 1 W. R. 20. [Loch and Glover,]]. Nov. 4, 1864.]

THE prisoner, having struck the deceased a hasty though fatal blow with a stick in his hand at the time for abusing his mother, was held guilty of culpable homicide not amounting to murder, and not of murder.—QUEEN v. SULREM SHEIKH, 1 W. R. 23. [Kemp and Glover,]]. Nov. 11, 1864.]

An unpremeditated assault (ending in an affray in which death is caused) committed in the heat of passion upon a sudden quarrel, it being immaterial which party offered the provocation or committed the first assault, was held to come within excep. 4 of s. 300 of the Penal Code.—QUEEN v. ZALIM RAI, I W. R. 33. [Kemp and Glover, J]. Nov. 25.

A CAPITAL sentence mitigated in the case of murder committed while under the in-Huence of provocation caused by an intrigue with the wife of the prisoner.—QUEEN 2. BHEKYE alias SHEIK ANSER, 1 W. R. 46. [Kemp and Glover, J]. Dec. 19, 1854.] +

The finding of a jury that, although the accused killed the deceased, the crime was not murder, not because it fell under any of the exceptions allowed by law, but because the accused had no object in killing him, is not legal finding, and does not amount to a conviction of culpable homicide not amounting to murder. —QUEEN v. UCKOOR GHOSE, 1 W. R. 50. [Glover, J. Dec. 30, 1864.]

WHEN there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault will or can cause death, the offence is not culpable homicide not amounting to murder, but glievous hurt.—Queen v. Megha Meeah alias Juckon Meeah, 2 W. R. 39. [Kemp and Glover,]]. Mar. 8, 1865.]

WHAT is necessary to bring a case of murder under the 4th exception to s. 300 of the Penal Code, so as to change the offence into culpable homicide not amounting to nurder. QUEER v. AKAL MAROMED, 3 W. R. 18. [Jackson and Glover, JJ. May 23, 1865.]

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CHAP. XVI.] OFFENCES AFFECTING THE HUMAN BODY: [SEO. 304.

THE Sessions Judge having found the prisoners guilty of striking the deceased with the knowledge that the act was likely to cause death—in other words, guilty of murder—convicted and punished them for culpable homicide not amounting to murder. Case remanded for a new trial (Jackson, J., dissenting).—QUEEN 7. BERIA BAZIKUR, 3 W. R. 38; [Kemp, Jackson, and Glover, JJ. July 6, 1865.]

THE absence of premeditation will not reduce the crime from murder to culpable homicide not amounting to murder.—QUEEN v. MAHOMED ELIM, 3 W. R. 40. [Kemp and Glover, J]. July 7, 1865.]

In an affray respecting land one of the aggressive party was killed. The prisoners, who were exercising the right of private defence of property, were acquitted by the jury of culpable homicide, but convicted of rioting. Held that the prisoners, not being legally guilty of any other offence coupled with rioting, and not being rioters or members of an unlawful assembly, could claim the benefit of s. 104, Penal Code.—QUREN v. MITTO SINGH, 3 W. R. 44. [Seton-Karr and Campbell, JJ. July 11, 1865.]

DISPUTE between two parties (the Mollahs and Shikdars), in which the Shikdars attacked and killed one of the Mollahs when exercising the right of retaking their own property; three of the Shikdars being also wounded. The Shikdars were convicted of culpable homicide not amounting to murder and rioting. As to the Mollahs, Loch, J., was of opinion that they were guilty of voluntarily causing grievous hurt; while the majority of the Court held that they were entitled to the protection conference, so not penal Code, on those who, while exercising the right of private defence, caused their assailant any harm other than death,—Queen v. Tanoo Shikdar, 3 W. R. 47. [Loch, Kemp, and Seton-Karr, J. July 17, 1865.]

THE offences of murder and of culpable homicide not amounting to murder, each supposes an intention or knowledge of likelihood of the causing death. In the absence of suchintention or knowledge, the offence committed may be the offence of causing grievous hurt.

—QUEEN v. BHADOO PORAMANIK, 4 W. R. 23. [Loch and Glover, JJ. Nov. 10, 1864.]

WHERE the corpus delicti is not established, there can be no conviction for culpable homicide not amounting to murder, nor for intentional omission to give notice of an offence which has not been proved to have been committed.—QUEEN v. RAM RUCHEA SINGH, 4 W. R. 29. [Kemp and Seton-Karr, JJ. Nov. 28, 1865.]

THE Judge having convicted the prisoners of culpable homicide not amounting to murder, after having found that the act by which death was caused was undoubtedly done with the intention of causing such bodily injury as was likely to cause death, the conviction was quashed as illegal, because inconsistent with the finding, and a new trial ordered.—

QUEEN v. SOUMBER GWALA, 4 W. R. 32. [Kemp and Seton-Karr, JJ. Dec. 5, 1865.]

INTRIGUING with a sister is sufficient grave provocation to justify a conviction of culpable homicide not amounting to murder as against the brothers, who, finding the deceased lying with their sister in the same bed, ill-treated him, from the effects of which ill-treatment he died.—Queen v. Kasseemuddeen, 4 W. R. 38. [Kemp, J. Dec. 22, 1865.]

Where a man of full age (i.e. above 18 years) submits himself to emasculation performed neither by a skilful hand, nor in the least dangerous way, and dies from the injury, the persons concerned in the act are guilty of culpable homicide not amounting to murder.

—QUEEN v. BABOOLUN HIJRAH, 5 W. R. 7. [Norman and Campbell, JJ. Jan. 15, 1866.]

It is not murder if a person kills another without intending to take his life, and if the acts done are not such as conclusively indicate an intention to cause such injury as was likely to cause death. In a referred case, and not an appeal, if the High Court deems a conviction wrong, the only course open to it is to annul the conviction, and order a new trial for the proper offence.—Queen v. Sheik Solim, 5 W. R. 41. [Seton-Karr and Macpherson, JJ. Feb. 8, 1866.]

UNDER the Penal Code no constructive, but an actual, intention to cause death is required to constitute murder. Thus, where a lad of 15 years, in the heat of discovery of the deceased in the act of adultery with a near relative's wife, and without the use of any lethal or other weapon, joined that relative in committing an assault on the deceased, who died from the effects thereof, held that the offence committed was culpable homicide not amounting to murder.—QUEEN v. GUREEBOOLLAH, 5 W. R. 42. [Norman and Campbell, J]. Feb. 12, 1866.]

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SEC. 304.] OFFENCES AFFECTING THE HUMAN BODY. [CHAP. XVI.

WHERE a Judge acquits a prisoner of intention to kill, but admits that the prisoner struck the deceased with a highly lethal weapon, with the knowledge that the act was such as was likely to cause death, the conviction should be for murder, and not culpable homicide not amounting to murder. The failure of the Judge to convict the prisoner on the graver charge is not an error of law with which the High Court can interfere under its revising powers.—Queen v. Sobeel Mahee, 5 W. R. 32. [Glever, J. Feb. 22, 1866.]

Held by the majority of the Court that the offence committed was murder where the death of a weak half-starved old woman, who was detected stealing, was caused in the exercise of the right of private defence, by the doing of more harm than was necessary for the purpose of such defence; Campbell, J., contra, being of opinion that a man who detects a thief stealing his property, and who, acting on the sudden impulse of the moment, inflicts on the thief blows so severe as to be likely to cause death, but which hedid not at the time know or feel to be likely to cause death, and which would not necessarily have caused death, to a person in ordinary health, but which, owing to abnormal weakness in the deceased not known to him, did cause death, is not guilty of murder, but of culpable homicide not amounting to murder.—Queen v. Gokool Bourree, 5 W. R. 33. [Norman, Campbell, and Phear, JJ. Feb. 26, 1866.]

A PERSON who beats another brutally and continuously, so that the back of the victim is reduced to a state of pulp, and yet studiously avoids breaking a bone (the very fact of his taking such a precaution evincing/deliberation), is guilty of murder or culpable homicide not amounting to murder, according as there may or may not have been grave provocation.—QUEEN v. TEPRAH FUKEER, 5 W. R. 78. [Kemp and Glover, JJ. May 9, 1866.]

The prisoner, having received great provocation from his wife, pushed her with both arms so as to throw her with violence to the ground, and after she was down, slapped her with his open hand. The woman died, and, on examination, it appeared that there were no external marks of violence on the body, but that there was a certain degree of disease of the spleen, and that death was caused by the rupture of the spleen. Held, under the circumstances, that the prisoner was guilty of causing hurt, and not of culpable homicide not amounting to murder.—Queen v. Punchanon Tantee, 5 W. R. 97. [Norman and Campbell, J]. May 28, 1866.]

A JUDGE, convicting on a charge of culpable homicide not amounting to murder should record under which of the exceptions in s. 300 the case falls.—Govt. v. Kalika Misser, H. Ct., N.-W. P., July 3, 1866.

Where a man was murdered by his brother and nephew while in the act of dishonouring the brother's wife, held that there was grave and sudden provocation within the meaning of excep. t, s. 300 of the Penal Code, which would have justified the murder if only such force had been used as was necessary to protect the wife from the outrage to which she was being subjected; but that, as the deceased had been beaten in a cruel and vindictive manner, the prisoners were guilty of culpable homicide not amounting to murder.—Queen v. Maithya Gazee, 6 W. R. 42. [Kemp and Markby, J]. July 10, 1866.]

Where a thief was caught house-breaking by night with half his body and his head through the wall of a house occupied by none but women except the prisoner and his young idiot son, and where the prisoner suddenly caught up a sort of pole-axe, and with it struck the thief five times on his neck, and nearly cut off his head, it was held that the offence committed by the prisoner was not murder, inasmuch as it was committed in the exercise of the right of private defence; but that, as the prisoner inflicted more hurt than was necessary for the purpose of defence, he was guilty of culpable homicide not amounting to murder.

Queen v. Fukeera Chamar, 6 W. R. 50. [Norman and Seton-Karr, J]. July 30, 1866.]

The prisoner, who was charged with culpable homicide not amounting to murder, was tried for that offence, and, there not being sufficient proof to convict on that charge, was tried by the Sessions Judge for not having used lawful means in preventing the riot (s. 154), and was punished for that offence. Held that the Sessions Judge was competent to change the charge, and to try the prisoner for any offence coming under any one of the sections of the Code.—Govt. v. Thacoor Dass, I Agra H. C. R. 13. [Morgan, C. J., Roberts and Turner, JJ., and Spankie and Turnbull, Offg. JJ. Aug. 21, 1866.]

EXPLANATION of the difference between murder, culpable homicide not amounting to murder, and grievous hurt.—Queen v. Hurry Doss Paul, 6 W. R. 86. [Loch, J. Nov. 28, 1866.]

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IN a case of culpable homicide not amounting to murder, it was held that, though the occasion might have been one in which the prisoner was justified in meeting force by force, still, as he inflicted a blow which he must have known was likely to cause death, he had exceeded his right of private defence with reference to cl. 4, s. 99 of the Penal Code.—Queen a Fuzza Meeah alias Fuzza Mahomed, 6 W. R. 89. [Kemp and Markby, J]. Dec. 13, 1866.]

THE prisoner was convicted and sentenced separately for culpable homicide not amounting to murder, and for being a member of an unlawful assembly. The two offences, however, being held to be one (the latter being only part of the evidence of the former), the convection and sentence for the second offence were quashed.—QUEEN v. Rubbergoolah, 7 W. R. 13. [Norman and Seton-Karr, J]. Jan. 16, 1867.] Dissented from in Queen v. Husgobind, 3 N.-W. P. 174.

A CONVICTION on a charge of causing the disappearance of evidence of an offence, which amounted to culpable homicide not amounting to murder, may be good, though there be no proof of who committed the culpable homicide.—Queen v. Muddun Mohun Boar, 7 W. R₂22. [Kemp and Markby, J]. Jan. 26, 1867.]

WHERE a man suddenly cut his wife's throat, it was held that, in order to establish that the act was not done under grave provocation, so as to bring the case under excep. I of s. 300 of the Penal Code, it is not sufficient to state that the deceased ceased abusing the prisoner then, but it is necessary to show what interval elapsed between the time when the deceased ceased to speak and the instant when the prisoner attacked her.—QUEEN v. NOKUL NUSHYO, 7 W. R. 27. [Norman and Seton-Karr, J]. Feb. 4, 1867.]

CAUSING death by branding a thief without the knowledge that the act was so immediately dangerous that it would, in all probability, cause death, or such bodily injury as was likely to cause death, is punishable under s. 304 of the Penal Code as culpable homicide not amounting to murder.—QUEEN v. KHEDUM MISSER, 7 W. R. 54. [Norman and Seton-Karr, JJ. April 8, 1867.]

PROOF of motive or previous ill-will is not necessary to sustain a conviction for thurder in a case where a person is coolly and barbarously put to death.—QUEEN v. JAICHAND MUNDLE, 7 W. R. 60. [Seton-Karr, J. April 29, 1867.]

IN & case of riot, in which a man was killed, the whole of the members of the unlawful assembly, as well the victorious as the worsted, were held equally guilty of culpable homicide not amounting to murder.—QUEEN v. Mana Singh, 7 W. R. 67. [Kemp and Glover, JJ. May 7, 1867.]

WHERE a person snatches up a log of heavy wood, and strikes another with it on a vital part with so much force and vindictiveness as to cause that other person's death almost on the spot, the act must be held to have been done with the knowledge that it was likely to cause death; but, if done without premeditation in the heat of passion on a sudden quarrel, the offence committed is culpable homicide not amounting to murder.—QUERN v. RAJOO GHOSE, 7 W. R. 70. [[ackson and Hobhouse,]]. May 20, 1867.]

EXPLANATION of the difference between murder, culpable homicide not amounting to murder, and grievous hurt.—QUEEN v. MADUR JOLAHA, 8 W. R. 28. [Loch, J. June 27, 1867.]

Where the accused, whose property had frequently been stolen, went out with a lathi to watch his property, and with the lathi struck a thief, who died from the effects of the blows, it was held (having regard to the nature of the injuries inflicted, and to the submedient conduct of the accused) that the case did not fall within the 4th exception to a 99, and that the prisoner was not guilty of culpable homicide not amounting to murder, but was protected by ss. 97 and 104 of the Penal Code, and had not exceeded the legal right of private defence of property.—Queen v. Mokee, 12 W. R. 15. [Norman and Jackson, J]. June 28, 1867.]

A PRISONER'S confession must be taken in its entirety. Where a prisoner confessed that be did-not suspect his wife's fidelity; that he left home on business; that on his return he saw what convinced him of his wife's infidelity; and that, maddened at the sight, he killed both her and her paramour, held that he was guilty of culpable homicide not amounting to murder, and that the case was one in which he ought to be treated with lenkty.—QUERN v. SHEIKH BOODHOO, 8 W. R. 38. [Kemp and Glover, JJ. July 9, 1867.]

CULPABLE homicide is not murder unless the case comes expressly within the provisions of cl. 1, 2, 3, or 4 of 5, 300 of the Penal Code. Under s. 299, an offence may amount

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only to culpable homicide, not murder, although none of the exceptions specified in s. 300 are applicable to the case. An express finding by the Sessions Judge that the case does not fall under any of the clauses of s. 300 is tantamount to an acquittal of murder; and after such an acquittal, the High Court cannot, either as a Court of Appeal, or as a Court of Revision, look at the evidence for the purpose of reversing the acquittal, and of convicting the prisoner of murder. There had been a riot and fight between two factions, and some members of one party (A) were charged with the murder of the leader of the other party (B), and some members of the other party (B) were charged with causing grievous hurt to the leader of (A). Held that the members of each party should have been committed for trial separately, and that the Magistrate was wrong in committing the members of party (A) and of party (B) for trial all together upon joint-charge as if they had none common object.—Queen v. Sheik Bazu, 8 W. R. 47; B. L. R., Sup. Vol., 750 [Peacock, C.]., and Loch, Bayley, Kemp, Seton-Karr, Phear, and Macherson, J. July 27, 1867.]

In charging a jury on the point of provocation in a case of culpable homicide, a Judge should tell the jury that, to bring the case within the exception to s. 300 of the Penal Code, the prisoner must have been deprived of the power of self-control by grave and sudden provocation; that there ought to have been sufficient cause for such loss of self-control; and that the provocation was not voluntarily provoked by the prisoner as an excuse for doing harm.—Queen v. Gunesh Luskur, 9 W. R. 72. [Glover, J. May 28, 1868.]

To give an accused the benefit of excep. 1, s. 300 of the Penal Code, it ought to be shown distinctly, not only that the act was done under the influence of some feeling which took away from the person doing it all control over his action, but that that feeling had an adequate cause.—Queen v. Huri Giree, 10 W. R. 26; 1 B. L. R., A. Cr., 11. [Loch and Glover, J]. Aug. 7, 1868.]

Accused was out in the jungles with his gun. An altercation arose between him and deceased, the former interfering to prevent the latter from committing real or supposed cattle-trespass. Deceased thereupon, with a large club, attacked accused, who fired without any particular aim, but lowering the muzzle of the gun, so as not to hit a vital part; and death ultimately resulted from the wound inflicted. Held that accused's act was flot a legal exercise of the right of private defence, as it was not necessary for his defence that he should fire; he had only to stand back, and let deceased alone, and he was safe. Held accordingly that the accused was rightly convicted of culpable homicide not amounting to murder.—Crown v. Kurreem Buksh, Panj. Rec., No. 13 of 1868.

Certain persons, whom the accused, a ferryman, was rowing across the river, were drowned by the sinking of a boat. Held on the facts of this case, that the accused could not be convicted of culpable homicide not amounting to murder, as there was nothing to show that he acted with the knowledge that he was likely by such act to cause death within the terms of s. 299 of the Penal Code. The prisoner was convicted under s. 282 of that Code of negligently conveying persons by water for hire in a vessel overloaded or unsafe.—In re Magener Behara, II W. R. 3. [Norman and Jackson, JJ. Jan. 26, 1869.]

The wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantations. The prisoner, armed with a sword, and watching from the roof of the house, saw his wife being actually violated by the deceased. He jumped down from the roof, and struck deceased with his sword in several places, from the effects of which he died. Held that the prisoner's conviction for murder could not be sustained. The offence committed was culpable homicide not amounting to murder.—Queen v. Ramtahal Kahar, 3 B. L. R., A. Cr., 33. [Norman and Jackson, J.J. July 12, 1869.]

In charging a jury in a case of culpable homicide not amounting to murder, a Judge should call upon the jury to state which description of culpable homicide they consider the accused to have committed, s. 304 of the Penal Code prescribing different punishments for that offence. Where the Judge omitted to require the jury to do this, the High Court held that the conviction was for the lighter description of the offence.—Queen v. Amere Khan, 12 W. R. 35; 6 B. L. R., Ap., 87n. [Jackson and Mitter, J]-July 22, 1869.]

• To take the offence of homicide out of the category of murder by reason of grave and sudden provocation, the act must be done whilst the person doing it is deprived of self-control by the grave and sudden provocation. But, when the act is done after the excite-

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4. had passed away, and there was time to cool, it is murder.—Queen v. Yasın Sheik, W. R. 66; 4 S. L. R., A. Cr., 6. [Loch and Glover,]]. Nov. 23, 1869.]

Where the accused pleads guilty before a Sessions Judge to a charge of murder, the Sessions Judge might either convict him on that plea of that charge, or proceed to try him on the evidence; but he cannot, without trial, convict the accused of culpable homicide not amounting to murder, to which offence the accused did not plead guilty. Held, with reference to the provisions of ss. 97, 99, and 102 of the Penal Code, that on the facts of this case the accused had no reasonable apprehension of danger to himself from the threats of the deceased whom he killed, and that, therefore, the right of private defence of the body did not arise, and the case was not taken out of the category of murder by reason of the 2nd exception to s. 300 of the Penal Code.—Queen v Gobadur Bhoovan, 13, W. R. 55; 4 B. L. R., Ap., 101. [Jackson and Glover, J. April 6, 1870.]

CERTAIN persons made a sudden attack upon the prisoners for the purpose of cutting their crops. The prisoners resisted, and, having no time to complain to the police, inflicted a wound upon one of the assailants with a bamboo, from the effects of which he atter ands died. The Sessions Judge convicted the prisoners under ss. 148 and 304 of the Penal Code. In appeal, the High Court held on the facts of the case (and following 7 W. R. 113) that the accused, who were in peaceable possession of their property, and were attacked while in such possession, did not exceed the right of private defence of property under s. 103, Penal Code. The High Court accordingly directed an acquittal.

—QUEEN v. GOOROO CHURN CHUNG, 14 W. R. 69; 6 B. L. R., Ap., 9. [Kemp and Glover, JJ. Nov. 19, 1870.]

Where a Sessions Judge, in charging a jury in a case of culpable homicide not amounting to murder, omitted to draw their attention to the two classes of the culpable homicide mentioned in s. 304 of the Penal Code, the High Court considered that the accused were found guilty of the lighter description, and sentenced the accused to the punishment for such lighter description.—QUEEN v. KALICHURN DASS, 15 W. R. 17; 6 B. L. R., Ap., 86. [Mitter and Ainslie, J]. Feb. 11, 1871.]

Where an old woman of 70 so beat a lad of 18 as to cause his death, and the Assistant Commissioner was of opinion that the beating was in the shape of chastisement, such as a mother would inflict on a disobedient child, and convicted the accused under s. 304A of the Penal Code, held that the Assistant Commissioner had no jurisdiction in the case, and that he should have committed the accused for trial before the Sessions Court on a charge under s. 304.—MUSSAMUT AUHUCHIA DOSADIN v. MUSSAMUT ANOOP KOONWUR THAKOORANEE, 18-W. R. 23: [Kemp and Glover, J]. June 26, 1872.]

PRISONER killed his mother by beating and kicking her. The Sessions Judge found that the death resulted from brutal beating and kicking, but acquitted of culpable homicide, because the violence was not such as the prisoner must have known to be likely to cause death. Held that this was no ground for acquitting of culpable homicide not amount, ing to murder; the question for the Judge was whether the act was done with the intention of causing bodily injury which was likely to cause death. The Sessions Judge convicted the prisoner on the charge of causing death by a rash act. Held that the section was wholly inapplicable. "Culpable rashness" and "culpable negligence" distinguished.—Reg. g., NIDAMARTI NAGABHUSHANAM, 7 Mad. H. C. R. 119. [Holloway and Kindersley,]]. Oct. 24, 1872.]

To enable a person to plead the extenuating circumstances provided for in s. 300, Penal Code, excep. 1, the provocation and its effects must be sudden as well as grave; and the deprivation of the power of self-control must continue in order to benefit a man who kills another under circumstances of grave provocation.—Queen. Bechoo Saot, 19 W. R. 35. [Glover and Mitter, JJ. Feb., 17, 1873.]

THE High Court as a Court of reference can only deal with cases in which a sentence of death has been passed. The prisoners, fearful of being punished if they allowed him to escape, and thinking that they were acting lawfully, in furtherance of a plan arranged for them by a police-constable and the lambardar of a village for the capture of an outlaw, for whose arrest a reward has been offered, and in pursuance thereof killed him while endeavouring to escape. Held that the offence committed came under the third exception in s. 300 of the Penal Code, and was culpable homicide not amounting to murder.—Queen a Aman, 5 N.-W. P. 130. [Spankie and Jardine, JJ. May 2, 1873.]

THE prisoners assaulted a thief so severely that he died. One hundred and forty-

ribs were broken. Held that s. 304A of the Penal Code was not applicable to the circumstances of the case, and that, taking the offence out of the category of murder, it must still come under s. 304.—QUEEN v. MAN, 5 N.-W. P. 235. [Pearson, J. Aug. 4, 1873.]

In a case in which the accused caused the death of a woman by beating, the medical officer who held the post-mortem examination considered that death resulted from rupture of the spleen, but the Civil Surgeon said that no opinion of the cause of death could be formed. The accused having been convicted of causing grievous hurt, and sentenced to six months' rigorous imprisonment by the Deputy Magistrate, the Magistrate considered that the accused ought to have been committed to the Sessions on a charge of culpable homicide, but recommended that the High Court should enhance the sentence which had been passed to one of sufficient severity to meet the offence. Held that the High Court could not deal with the case in the mode suggested; but, under s. 207, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 439, new Code of Criminal Procedure (Act X. of 1882), the Court annulled the conviction by the Deputy Magistrate, and directed that the accused should be committed to the Sessions on charges of culpable homicide and of grievous hurt.—Queen v. Hurish Pal, 20 W. R. 63. [Jackson and Mitter J]. Sep. 19, 1873.]

In a case in which the accused was tried on charges of murder, culpable homicide, and causing grievous hurt, the jury acquitted him of murder, but convicted him on the other This verdict was recorded by the Sessions Judge, who then, in accordance with a 263, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 303, new Code of Criminal Procedure (Act X. of 1882), questioned the jury as to the grounds for their verdict, and the jury eventually intimated their willingness to convict of murder. The Sessions Judge differed from the first verdict of the jury; but, as he had recorded the first verdict, he doubted whether he could accept the second verdict, and referred the case to the High Court under s. 263. Held that s. 263 did not apply to such a case as this There could be no verdict delivered, and no verdict finally recorded until the last of the questions put by the Sessions Judge to the jury was answered; and, as it appeared from the answers of the jury that their findings of facts disclosed that the verdict ought to have been one of guilty on the charge of murder, the Sessions Judge should have entered the verdict of the jury as the verdict of guilty of murder. The case was accordingly returned to the Sessions Judge to enable him to do that, and to pass such sentence as the law directs ed. It is only when it is necessary in order to ascertain what the verdict of a jury really is that a Judge is justified under s. 263 in putting questions to the jury.—QUEEN v. Sus-TIRAM MANDAL, 21 W. R. 1. [Phear and Morris, J]. Nov. 19, 1873.]

WHERE a prisoner was charged under ss. 304, 325, and 323, and the jury brought in a verdict of guilty under s. 335, held that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322 with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—QUEEN v. LUKHINARAIN AGOORI, 23 W. R. 61. [Jackson and McDonell, JJ. April 8, 1875.]

Where it appeared in the case of a person charged with murder that, while smarting from a severe blow from a stick in the midst of a sudden fight, and possibly apprehensive of further violence, finding a knife at hand, he took it up, and in the mélée inflicted the wound which caused the death of the deceased, held that, under the circumstances, the accused was guilty, under the Penal Code, s. 304, of culpable homicide not amounting to murder.—Queen v. Somiruddin, 24 W. R. 48. [Jackson and McDonell, JJ. Aug. 20. 1875.]

Where the prisoner knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the closed fist, producing extravasation of blood on the brain, and she died in consequence, either on the spot, or very shortly afterwards, held that, there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death, the offence committed by the prisoner was not murder, but culpable homicide not amounting to murder—Reg. v. Govinda, I. L. R., I Bom. 342. [Kemball and Nanabhai Haridas, J]. July 18, 1876.]

In the course of a trivial dispute, the accused gave the deceased a severe push on the back, which caused him to fall to the road below, a distance of two-and-a-half cubits. In falling, the deceased sustained an injury from which tetanus resulted, which caused his death on the fifth day after. Held that, on these facts, the accused was not guilty-of the offence described in s. 304A of the Penal Code, nor of culpable homicide not amounting to murder, because there was no likelihood of the result following, and, à fortiori, to

death, but willing the intention of coming death

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designed causing of it.—Reg. v. Acharjya, I. L. R, 1 Mad. 224. [Holloway and Innes,]]. [an. 10, 1877.]

UNDER S. 288 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 376 of the new Code of Criminal Procedure (Act X. of 1882), the High Court, to which a reference is made by a Court of Session for confirmation of a sentence of death en conviction of murder, cannot, in the absence of an appeal, alter the conviction to one of calpable homicide not amounting to murder if it be of opinion that the evidence does not establish the former but the latter offence. It must order a new trial for that purpose. Where the prisoners were tried on two charges of murder and culpable homicide not amounting to murder, and the opinion of the assessors was taken on both charges, but the Sessions Judge, being of opinion that the evidence established the former charge, recorded a conviction and sentence for murder only, the High Court, being of opinion, on a reference under s. 287 of Act X. of 1872 (corresponding with s. 374 of Act X. of 1882), that the offence proved was culpable homicide not amounting to murder, did not order a new stial ab initio, but directed the Sessions Judge to complete the trial by recording a finding on the second charge of culpable homicide not amounting to murder.—Rec. v. Balaka bin Dandara, I. L. R., 1 Bom. 630. [Melvill and Kemball, JJ. April 26, 1872.]

WHERE death has resulted from a violent attack, the Magistrate is bound to commit to the Court of Session on a charge of culpable homicide not amounting to murder. Conviction of grievous hurt is contrary to law.—In the Matter of Gopinath Shaha, I C. L.R. 141. [Markby and Prinsep, J]. Sep. 6, 1877.]

A SNAKE-CHARMER exhibited in public a venomous snake, whose fangs he knew had not been extracted; and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators. The spectator tried to push off the snake, was bitten, and died in consequence. Held that the snake charmer was guilty, under s. 304 of the Penal Code, of culoable homicide not snowsting to murder, and not merely or causing death by negligence, an offence punishable under s. 304 — EMPRESS v. GONESH DOOBEY, I. L. R., 5 Cal. 351; 4 C. L. R. 580. [McDonell and Broughton, JJ. July 28, 1879.]

WHERE a mother abandoned her child, with the intention of wholly abandoning it, had knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment, held that she could not be convicted and punished under 2.304 and also under s. 317 of the Penal Code, but s. 304 only.—Empress v. Banni, J. L. R., 2 All. 349. [Straight, J. Aug. 4, 1879.]

WHERE a person hurt another, who was suffering from spleen-disease, intentionally, but without the intention of causing death, or causing such bodily injury as was likely to clicke death, or the knowledge that he was likely by his act to cause death, and by his act tocause death, and by his act classed the death of such other person, held that he was properly convicted under s. 323 of the Penal Code of voluntarily causing hurt.—EMPRESS v. Fox, I. L. R., 2 All. 522. [Stuart, C.J. Dec. 16, 1879.]

B VOLUNTARILY caused hurt to N, who was suffering from spleen-disease, knowing himself to be likely to cause grievous hurt, but without the intention of causing death, or treating such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and caused grievous hurt to N, from which N died.

What that B ought not to be convicted under s. 304A of the Penal Code of causing death by segligence, but under s. 325 of that Code of voluntarily causing grievous hurt.—EMPRESS C. D'BRIEN, I. L. R., 2 All. 766. [Stuart, C.J., and Spankie, J. Mar. 6, 1880.]

WHERE death results in a fight between two bodies of men deliberately fighting together, a greater proportion of the men composing both sides being armed with deadly weapons, and it being further apparent from the evidence that the man slain was an adult, and that no unfair advantage was taken by the one side or the other during the fight, the committed is culpable homicide, but does not amount to murder.—Samshere than a Bepers, I. L. R., 6 Cal. 154; 7 C. L. R. 158. [White and Field, J]. July 31, 1880.] Contra, Empress & Rohimuddin, 4 C. L. R. 285.

Gar a certain evening, M, a common workman, saw N committing adultery with his wife, and on the following morning, while labouring under the excitement provoked by dar misconduct, came upon them, eating food together, while his wife had neglected to the same of the misconduct, came upon them, eating food together, while his wife had neglected to the presented to the subsequent conduct of N and his wife with their misconduct of the presented the subsequent conduct of N and his wife with their misconduct of the presented the subsequent conduct of the sub

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which, under the circumstances, he might have done, the provocation was sufficiently gave and sudden to deprive him of self-control, and to reduce the offence from murder to culpable homicide not amounting to murder.—BOYA MUNIGADU v. REG., J. L. R., 3 Mad. 33. [Innes and Muttusami Ayyar, J]. April 20, 1881.]

Where a person struck another a blow which caused death, without any intention of causing death, or of causing such bodily injury as was likely to cause death, or the knowledge that he was likely by such act to cause death, but with the intention of causing grievous hurt, held that the offence of which such person was guilty was hot the offence of causing death by a rash act, but the offence of voluntarily causing grievous hurt. Nidemark Nagabhushanam (7 Mad. H. C. R. 119), Queen v. Pemkoer (5 N.-W. P. 38), Queen v. Man (5 N.-W. P. 235), Empress v. Ketabdi Mundul (1. L. R., 4 Cal. 764), Empress v. Fox (I. L. R., 2 All. 522), and Empress v. O'Brien (I. L. R., 2 All. 766), followed. The offences of murder, culpable homicide not amounting to murder, and causing death by a rash or negligent act, distinguished.—Empress v. Idu Beg, I. L. R., 3 All. 776. [Straight,]. Aug. 12, 1881.]

An accused person, in answer to a charge of murder, stated that he had killed his wife, but that he had done so in consequence of his having discovered her in an act of adultery on the previous day. Held that such a statement did not amount to a plea of guilty on the charge, and that it was the duty of the Court to try whether the provocation therein disclosed was sufficiently grave and sudden to reduce the offence.—Netal Luskar v. Queen-Empress, I. L. R., 11 Cal. 410. [Field and Beverley, J]. Mar. 25, 1885.]

Upon the trial of a person charged with the murder of his wife, it was proved that the accused had entertained well-founded suspicions that his wife had formed a criminal intimacy with another person; that one night the deceased, thinking that her husband was asleep, stealthily left his side; that the accused took up an axe and followed her, freed her in conversation with her paramour in a public place, and immediately killed her. Held that the act of the accused constituted the crime of murder, the facts not showing "grave and sudden provocation" within the meaning of s. 300, excep. 1, of the Penal Code, so as to reduce the offence to culpable homicide not amounting to murder. Queme Anothers v. Damarua (Weekly Notes, 1885, p. 197) distinguished by Straight, Offg. C.J.—QUBEN-EMPRESS v. MOHAN, I. L. R., 8 All. 622. [Straight, Offg. C.J., and Brodhust, J. June 26, 1886.]

An accused person was convicted of culpable homicide not amounting to murder in respect of the widow of his cousin, who lived with him. The evidence showed that the accused was seen to follow the deceased for a considerable distance with a gandasa or chopper, under circumstances which indicated a belief on his part that she was going to keep an assignation, and with the purpose of detecting her in doing so. He found her in the act of connection with her paramour, and killed her with the chopper. Held that the conviction must be altered to one of murder, as the accused went deliberately in search of the provocation sought to be made the mitigation of his offence, and, under the circumstances disclosed, it could not be said that he was deprived of self-control by grave and sudden provocation. Queen-Empress v. Damarua (Weekly Notes, 1885, p. 199) and Queen-Empress v. Mohan (I. L. R., 8 All. 622) referred to.—QUEEN-EMPRESS v. Laguar, I. L. R., 8 All. 635. [Straight, C.J., and Mahmood, J. Aug. 2, 1886.]

SUBJECT to the other provisions of the Criminal Procedure Code, s. 28 gives power to the High Court and the Court of Session to try any offence under the Penal Code; and the provision it contains as to the other Courts does not cut down or limit the jurisdiction of the High Court or the Court of Session. Three persons were jointly committed for trial before the Court of Session, two of them being charged with culpable hosnicide not amounting to murder of J, and the third with abetment of the offence. At the trial, the Sessions Judge added a charge against all the accused of causing hurt to C, and convicted them upon both the original charges and the added charge. The assault upon C took place either at the same time as, or immediately after, the attack which resulted in the death of J. Held that the case did not come within the terms of s. 226 of the Criminal Procedure Code (Act X. of 1882), and the adding to the charge was an irregularity which was not covered by ss. 236 and 237, those sections having no application to such a state of things; but that, inasmuch as the Sessions Judge was addressed by the pleader who appeared for the accused, and heard all the objections raised, and witnesses might have been called for the defence upon the added charge, the provisions of s. 537 were applicable to the case. Held also that the Sessions Judge had power, under s. 28 of the Code

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to try the charge, assuming that he had power to add it.—QUEEN-EMPRESS v. KHARGA, I. L. R., 8 All. 665. [Edge, C.J. Aug. 30, 1886.]

THE prisoner a full-developed adult man, was charged with causing the death of his wife, a girl aged about 11 years and 3 months, who had not attained puberty. The death was caused by hæmorrhage from a rupture of the vagina caused by the prisoner having sexual intercourse with the girl. For the defence it was alleged that he had had sexual intercourse with the girl on several previous occasions without injury to her, and there were circumstances in the case which showed that this was possible, and even not improbable, though the medical evidence was to the effect that, if such intercourse had previously taken place, the penetration was probably not so complete or with so much sexual vigour as on the occasion when the injury was caused. The medical evidence was further to the effect that the girl had not attained puberty, and was immafure, and wholly unfit for sexual intercourse; that, under such circumstances, sexual intercourse between the prisoner and the girl was likely to be dangerous to her, and to cause injuries more or less serious according to the degree of penetration effected. The prisoner was charged with (a) culpable homicide not amounting to murder under s. 304 of the Penal Code; (b) causing death by doing a rash and negligent act under s. 304A; (c) voluntarily causing grievous hurt under s. 325; and (d) causing grievous hurt by doing an act so rashly or negligently as to endanger human life or the personal safety of others under s. 338. Held that, in such a case, when the girl is a wife and above the age of 10 years, and when, therefore, the law of rape does not apply, it, by no means, follows that the law regards the wife as a thing made over to be the absolute property of her husband, or as a person outside the protection of the criminal law; that no hard-and-fast rule can be laid down that sexual intercourse with a girl under a tertain age must be regarded as dangerous and punishable, or over that age as safe and right, but that each case must be judged according to its own individual circumstances; that in such a case the jury have to consider and say whether, under the particular circumstances of the case, having regard to the physical condition of the girl, and to the intention, the knowledge, the degree of rashness or negligence with which the accused is shown to have acted on the occasion in question, he has brought himself within any of the provisions of the criminal law. Held further that, if the jury were of opinion (a) that the act of the prisoner caused the death of the girl, that is to say, that the act of conabitation on the part of the prisoner had the effect of rupturing the vagina, and so causing the hæmorrhage which led to her death; (b) that the act of cohabitation between a fully developed man like the prisoner and an immature girl like his wife was itself a thing likely to lead to dangerous consequences; (c) that that act was one of such a character as to indicate a reckless indifference to the welfare of the girl, or a want of reasonable consideration about what the prisoner was doing, one which the husband of the girl, if he had had a reasonable regard to ber welfare, and had exercised reasonable thought as to the act he contemplated doing, would have abstained from doing, they would be justified in finding that the prisoner caused the death of the girl by a rash and negligent act. Under no system of law with which Courts have to do in this country, whether Hindu or Mahomedan, or that framed under British rule, has it ever been the law that a husband has the absolute right to enjoy the person of his wife without regard to the question of safety to her. -QUERN-ENPRESS v. HURRER MOHUN MYTHER, I. L. R., 18 Cal. 49. [Wilson, J. July, 1890.]

Causing death by negling shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

WHERE an old woman of 70 so beat a lad of 18 as to cause his death, and the Assist-Bailable.

and Commissioner was of opinion that the beating was in the shape of chastisement, such Bailable. Not compared the Penal Code, it was held that the Assistant Commissioner had no jurisdiction in the case, and that he should have committed the accused for trial before the Sessions Court on a charge unders. 304.—MUSSAMUT AUHUCHIA DOSADIN 7. MUSSAMUT ANOOP KOONWUR THAKOGRANEE, 18 W. R. 23. [Kemp and Glover, J]. June 26, 1872.]

FRISONER killed his mother by beating and kicking her. The Sessions Judge found that the death resulted from brutal beating and kicking, but acquitted of culpable homi-

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Presy. Mag. or Mag. of Ist class. Cognizable. Warrant. Bailable. Not comp.

^{*} New section added by Act XXVII. of 1870, s. 12.

SEC. 304A.] OFFENCES AFFECTING THE HUMAN BODY. [CHAP.XVI.

cide, because the violence was not such as the prisoner must have known to be likely to cause death. Held that this was no ground for acquitting of culpable homicide not amounting to murder. The question for the Judge was, whether the act was done with the intention of causing bodily injury which was likely to cause death. The Sessions Judge convicted the prisoner on the charge of causing death by a rash act. Held that the section was wholly inapplicable. In distinguishing "culpable rashness" from pable negligence." the High Court made the following important observations: "Culpable Tashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness (luxuria). Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that, if he had, he would have had the consciousress. The imputability arises from the neglect of the civic duty of circumspection. It is manifest that personal injury consciously and intentionally caused cannot fall within either of these categories, which are wholly inapplicable to the case of an act or serie: of acts themselves intended, which are the direct producers of death. To say that because, in the opinion of the operator, the sufferer could have borne a little more without death following, the act amounts merely to rashness, because he has carried the experiment too far, results from an obvious and dangerous misconception. We have had great hesitation whether we ought not to have remitted this case for a finding, whether the Sessions Judge and the assessors think that the act was done with such knowledge as to constitute culpable homicide. We are, however, averse to re-opening criminal cases unless absolutely compelled to do so, and as the evidence makes out, at least, a case of culpable homicide not amounting to murder, and legal though inadequate sentence (rigorous imprisonment for two years) has been passed, we are able, under s. 426 of the Criminal Procedure Code, 1861 (corresponding with s. 537 of the new Code of Criminal Procedure, 1882), simply to dismiss the appeal. As thas is neither a case of rashness nor of negligence, it becomes unnecessary to consider whether in any case a conviction under this new section can properly follow, where the rashness or negligence amounts to culpable homicide. It is clear, however, that, if the words 'not amounting to culpable homicide' are a part of the definition, the offence defined by this section consists of the rash or negligent act not falling under that category, as much as of its fulfilling the positive requirement of being the cause of death "-REG. F. NIDAMARTI NAGABHUSHANAM, 7 Mad. H. C. R. 119. [Holloway and Kindersley,]]. Oct. 24, 1872.]

WHERE there was medical evidence to show that milk had been administered to a child in such quantities as to kill it, but there was no evidence to show that the milk was administered by the orders of the mother, or that she knew the quantity that was being administered, held that there was not sufficient evidence to bring her within s. 304A of the Penal Code. The Sessions Judge found that the mother could not have been ignorant of the fact that her child was being over-fed, or of the probable consequences of such over-feeding, such feeding was inconsistent with the terms of s. 304A, which provides for the causing of death by any rash or negligent act not amounting to murder. What a man does with the knowledge that the consequences will be likely to cause death cannot be reduced to a simple rash and negligent act.—QUEEN v. MUSSUMAT PERMORE, 5 N.-W. P. 38. [Spankie, J. Feb. 15, 1873.]

The prisoners assaulted a thief so severely that he died. One hundred and forty-one marks of separate blows were found on the body of the deceased, several of his ribs were broken. Held that s. 304A of the Penal Code was not applicable to the circumstances of the case, and that, taking the offence out of the category of murder, it must still come under s. 304.—QUBEN v. MAN, 5 N.-W. P. 235. [Pearson, J. Aug. 4, 1873]

THE accused struck his servant with a stick on his side for refusing to obey certain orders given him. The servant was at the time suffering from enlarged spleen, and its rupture caused his death. The Magistrate convicted the accused under s. 304A of the Penal Code, and out of the fine imposed, awarded compensation to the relatives of the deceased under Act XIII. of 1855. The Chief Court held that the award of compensation was illegal.—Crown v. Gopal Das, Panj. Rec., No. 7 of 1877.

WHERE an accused was charged with culpable homicide, and the evidence showed that the deceased had an enlarged spleen, and that his death was caused by rupture of

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the plean occasioned by blows inflicted by the accused on the body of the deceased, held that it was not sufficient, in order to find the accused guilty of a rash act under s. 304A of the Penal Code, that the jury should be satisfied only of the prevalence of the disease of calargement of the spleen in the district, and infer therefrom criminal rashness in beating the deceased; but that they should also be satisfied that the accused was aware of the prevalence of such disease in the district, and also aware of the risk to life involved in striking a person afflicted with that disease.—Empress v. Safatulla, I. L. R., 4 Cal. 815. [Morris and White, JJ. Mar. 31, 1879.]

Where the facts found showed that death resulted from violence intentionally directed against the deceased by the accused, the Chief Court, on the revision side, altered the conviction from one under s. 304A to one under s. 323.—EMPRESS v. GANDA SINGH, Panj. Rec., No. 11 of 1880.

Where a person struck another a blow which caused death, without any intention of causing death, or of causing such bodily injury as was likely to cause death, or the know-ledge that he was likely by such act to cause death, but with the intention of causing grievous hurt, held that the offence of which such person was guilty was not the offence of causing death by a rash act, but the offence of voluntarily causing grievous hurt. Reg. v. Nida. marti Nagabhushanam (7 Mad. H. C. R. 119), Queen v. Pemkar (5 N.-W. P. 38), Queen v. Man (5 N.-W. P. 235), Empress v. Ketabdi Mundul (I. L. R., 4 Cal. 764), Empress v. Fox (I. L. R., 2 All. 522), and Empress v. O'Brien (I. L. R., 2 All. 766) followed. The offences of murder, culpable homicide not amounting to murder, and causing death by a rash or aegligent act, distinguished.—Empress v. ldu Beg. I. L. R., 3 All. 776. [Straight, J. Aug. 12, 1881.]

N, A servant of a railway-company, charged with moving some trucks by coolies on an incline, discharged this duty negligently, and in consequence lost control of the trucks. Under his orders, one of the coolies attempted to stop the trucks, and was killed in such attempt. Held that A had caused the coolie's death by his negligence, within the meaning of s. 304A of the Penal Code. Reg. v. Longbottom (3 Cox. C. C. 439), Reg. v. Swindgell (2 C. & K. 230), Reg. v. *Williamson* (1 Cox. C. C. 97), referred to.—Empress v. Nand Kishque, I. L. R., 6 All. 248. [Oldfield, J. Mar. 8, 1884.]

In the course of a trivial dispute the accused gave the deceased a severe push on the back, which caused him to fall to the road below. a distance of two-and-a-half cubits. In falling the deceased sustained an injury from which tetanus resulted, which caused his death on the fifth day after. Held that, on these facts, the accused was not guilty of the oftence described in s. 304A of the Penal Code, nor of culpable homicide not amounting to murder, because there was no likelihood of the result following, and, à fortiori, no designed causing of it.—Reg. v. Acharjya, I. L. R., I Mad. 224. [Holloway and Innes,]]. Jan. 19, 1877.]

A SNAKE-CHARMER exhibited in public a venomous snake, whose fangs he knew had not been extracted; and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators. The spectator tried to push off the snake, was bitten, and died in consequence. The High Court held that the snake-charmer was guilty of culpable homicide not amounting to murder under s. 304, and not merely of causing death by negligence, an offence punishable under s. 304A.—EMPRESS v. Gonesh Doobey, I. L. R., 5 Cal. 351; 4 C. L. R. 580. [Mc-Donell and Broughton, JJ. July 28, 1879.]

S. 304A of the Penal Code does not apply to a case in which there has been a voluntry commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result; and if such knowledge can be imputed, the result is not to be attributed to mere rashness; if it cannot be imputed, still the wilful offence does not take the character of rashness, because its consequences have been unfortunate. Acts probably or possibly involving danger to others, but which in themselves are not offences, may be offences under s. 336, 337, 338, or 304A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge, or means of knowledge, of the offender and placed in their appropriate place in the class of offences of the same character. Reg. v. Nidamarti Nagabhasaemam (7 Mad. H. C. R. 119), cited and approved.—EMPRESS v. KETABDI MUNDUL, I. L. R., 4 Cal. 764; 2 C. L. R. 507. [Ainslie and Broughton, J]. Feb. 26, 1879.]

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B VOLUNTARILY caused hurt to N, who was suffering from spleen-disease, knowing himself to be likely to cause grievous hurt, but without the intention of causing death or causing such bodily injury as was likely to cause death, or without the knowledge that he was likely by his act to cause death, and caused grievous hurt to N from which N died. The High Court held that B ought not to be convicted under s. 304A of the Penal Code (Act XXVII. of 1870, s. 12) of causing death by negligence, but under s. 325 of that Gode of voluntarily causing grievous hurt.—EMPRESS v. O BRIEN, I. L. R, 2 All. 766. [Stuart,

A PERSON, without the intention to cause death, or to cause suchebodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, or the intention to cause grievous hurt, or the knowledge that he was likely by his act to cause grievous hurt, but with the intention of causing hurt, caused the death of another person by throwing a piece of a brick at him, which struck him in the region of the spleen, and ruptured it, the spleen being diseased. Held that the offence committed was not the offence of causing death by a rash or negligent act, but the offence of voluntarily causing hurt.—Empress v. Randhir Singh, I. L. R., 3 All. 597. [Oldfield, J. Mar. 7, 1881.]

A KOBIRAJ operated on a man for internal piles by cutting them out with an ordinary The man died from hæmorrhage. The kobiraj was charged under s. 304A of the knife. Penal Code, with causing death by doing a rash and negligent act. It was contended that, inasmuch as the prisoner had performed similar operations on previous occasions, it was the does not not a rash act within the meaning of that section, and that, at all events, he was entitled to the benefit of s. 88 of the Penal Code, as he did the act in good faith, without any inalisate the tention to cause death, and for the benefit of the patient who had accepted the risk. Held usent . itte that, as the prisoner was admittedly uneducated in matters of surgery, and having regard to the meaning of "good faith" as defined in s. 52 of the Penal Code, he was not entitled to the benefit of s. 88. Held further that s. 88 did not apply to the case, as it was not shown by the accused, on whom the burden of proving that fact lay, that the deceased knew the risk he was running in consenting to the operation, and he could not therefore be said to have accepted the risk. Held also that, under the circumstances, the conviction under s. 304A was a proper one.—Sukaroo Kobiraj v. The Empress, I. L. R., 14 Cal. 566. [Tottenham and Ghose,]]. April 30, 1887.]

WHERE death is caused by an act being in its nature criminal, s. 304A of the Penal Code has no application.—Queen-Empress v. Damodaram, I. L. R., 12 Mad. 56. [Muttusami Ayyar and Parker, J] July 18, 1888.]

An order that the amount of a fine imposed on one convicted of causing death by a rash and negligent act be paid as compensation to the widow of the deceased is illegal.—
In re Lutchmaka, I. L. R., 12 Mad. 352. [Muttusami Ayyar and Parker,]]. Mac. sq. 1889.]
The prisoner, a fully-developed adult man, was charged with causing the death of

his wife, a girl aged about 11 years and 3 months, who had not attained puberty. The death was caused by hæmorrhage from a rupture of the vagina caused by the prisoner having sexual intercourse with the girl. For the defence it was alleged that he had had sexual intercourse with the girl on several previous occasions without injury to her, and there were circumstances in the case which showed that this was possible, and even not improbable, though the medical evidence was to the effect that, if such intercourse had previously taken place, the penetration was probably not so complete or with so much sexual vigour as on the occasion when the injury was caused. The medical evidence was further to the effect that the girl had not attained puberty, and was immature and wholly unfit for sexual intercourse; that, under such circumstances, sexual intercourse between the prisoner and the girl was likely to be dangerous to her, and to cause injuries more or less serious according to the degree of penetration effected. The prisoner was-charged with (a) culpable homicide not amounting to murder under s. 324 of the Penal Cod; (4) causing death by doing a rash and negligent act under s. 304A; (c) voluntarily causing grievous hurt under s. 325; and (d) causing grievous hurt by doing an act so rathly negligently as to endanger human life or the personal safety of others under s. 338. that, in such a case, when the girl is a wife and above the age of 10 years, and when, there fore, the law of rape does not apply, it by no means follows that the law regards the will as a thing made over to be the absolute property of her husband, or as a person outside

as a thing made over to be the absolute property of her husband, or as a person outsithe protection of the criminal law; that no hard and fast rule can be laid down that since intercourse with a girl under a certain age must be regarded as dangerous and punishable or over that age as safe and right, but that ea h case must be judged according to it in the control of the control

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individual circumstances; that, in such a case, the jury have to consider and say whether, under the particular circumstances of the case, having regard to the physical condition of the girl, and to the intention, the knowledge, the degree of rashness or negligence with which the accused is shown to have acted on the occasion in question, he has brought himself within any of the provisions of the criminal law. Held further that, if the jury were of opinion (a) that the act of the prisoner caused the death of the girl, that is to say; that the act of cohabitation on the part of the prisoner had the effect of rupturing the vagina, and so causing the hæmorrhage which led to her death; (b) that the act of cohabitation between a fully-developed man like the prisoner and an immature girl like his wife was itself a thing likely to lead to dangerous consequences; (c) that that act was one of such a character as to indicate a reckless indifference to the welfare of the girl or a want of reasonable consideration about what the prisoner was doing, one which the husband of the girl, if he had had a reasonable regard to her welfare, and had exercised reasonable thought as to the act he contemplated doing, would have abstained from doing, they would be justified in finding that the prisoner caused the death of the girl by a rash and negligent act. Under no system of law with which Courts have to do in this country, whether Hindu or Mahomedan, or that framed under British rule, has it ever been the law that a husband has the absolute right to enjoy the person of his wife without regard to the question of safety to her.—Queen-Empress v. Hurree Mohun Myther, I. L. R., 18 Cal. 49. [Wilson, J. July, 1890.]

305. If any person under eighteen years of age, any insane person, Ct. of Ses, Abetment of suicide of child any delirious person, any idiot, or any person in a Cognizable.

state of intoxication, commits suicide, whoever abets Warrant.

Not bailable. or insane person. the commission of such suicide shall be punished with death or transportation Not comp. for life, or imprisonment for a term not exceeding ten years, and shall also be stroff. liable to fine.

THE prisoners, having abetted the suicide, were rightly convicted by the Judge for that offence. The sentence was mitigated under the circumstances. - GOVT. v. GOPAUL SINGH, 1 Agra H. C. R. 21. [Pearson and Turner, JJ., and Spankie, Offg. J. Sep. 10,

EVIDENCE that a woman prepared herself to commit suicide in the presence of the accused, that they followed her to the pyre, and stood by her, her step-sons crying, "Ram! Ram!" and one of the accused admitting that he told the woman to say, "Ram! Ram!" and she would become "suttee," proves active connivance and unequivocal countenance of the suicide by the accused, and justifies the inference that they had engaged with her in a conspiracy for the commission of the suttee.—QUEEN v. MOHIT Pandey, 3 N.-W. P. 316. [Pearson, J. Sep. 6, 1871.]

306. If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment Abetment of suicide. of either description for a term which may extend to ten years, and shall also be liable to fine.

CHARGE.—That you, on or about the day of , abetted the , at commission of suicide by A.B., a person in a state of intoxication, and thereby committed an offence punishable under s. 306 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXVIII. (I.).

In a case of suttee three of the prisoners aided a little boy in setting fire to a pile, while another, who did not co-operate in causing the death of the widow, took an active Held that the first three prisoners were guilty of culpable homicide, and the other prisoner of abstment of suicide only. The High Court made the following remarks: "It is found by the assessors and the Judge that the first three defendants abetted a little boy in cetting fire to the pile. The boy was the son of one of the appellants, who ordered him to apply the lite; the others, being present, aided and abetted. It is controded for the appellants. ire; the others, being present, aided and abetted. It is contended for these appellants that the offence, if proved, is only abetment of suicide, not culpable homicide; but I think that abetment of suicide is confined to the case of persons who aid and abet the commission of suicide by the hand of the person himself who commits the suicide; when another person, at

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SEC. 307.] OFFENCES AFFECTING THE HUMAN BODY. [CHAP. XVI.

the request of, or with the consent of, the suicide, has killed that person, he is guilty of hemicide by consent, which is one of the forms of culpable homicide. In this case, the person who set fire, which caused the death by fire, is just as much guilty of the homicide as if he had fired a gun or thrown the deceased into the river." As to the other prisoner, the High Court remarked as follows: "The Judge simply states as the result of his opinion on the evidence affecting No. 10, that, though apparently he did not at first co-operate to cause the death of the widow, he took an active part in causing her to return to the pile...... I am of opinion that, as Umrao Chowdhry did not abet the acts of Nos. 3, 4, and 5 in setting fire to the pile, his action, as found by the Judge, only amounted to an abetment of suicide."—Queen v. Sahebloll, I. R. J. and P. J. 174. [Campbell,].

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

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Attempt to murder.

Attempt to murder.

Attempt to murder.

Caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

When any person offending under the section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.*

Illustrations.

(a.) A shoots at Z with intention to kill him, under such circumstances, that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

• (b.) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c.) A, intending to murder Z, buys a gun and loads it. A has not yet confimitted the offence. A fires the gun at Z. He has committed the offence defined in this section; and, if by such firing he wounds Z, he is liable to the punishment provided by the latter part of the first paragraph of † this section.

(d) A, intending to murder Z by poison, purchases poison, and mixes the same with food which remains in A's keeping: A has not yet committed the offence defined in this section. A places the food on Z's table, or delivers it to Z's servants to place it with Z's table. A has committed the offence defined in this section.

· Rulings.

NEITHER under s. 307, nor under s. 394, of the Penal Code, can a prisoner be seatenced to 14 years' transportation, the punishment awardable under those sections being transportation for life, or rigorous imprisonment for 10 years, with fine.—Queen v. Bhamour Doosadh, 7 W. R. 41. [Kemp and Glover, JJ. Mar. 11, 1867.]

In order to constitute the offence of attempt to murder under s. 307 of the Penal Code, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. Aliter under s. 511 taken in connection with sa. 299 and 300. Therefore, where the prisoner presented an uncapped gun at F G believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger, it was held that he could not be convicted of an attempt to murder upon a charge framed under s. 307, but that, under the same circumstances, he might be convicted upon a charge of simple attempt to murder framed under s. 511 in connection with ss. 299 and 300. Unnecessary allegations in a charge may be rejected as surplaner. Apparent inconsistency between the English law with reference to attempts as laid does

^{*} This clause has been added by Act XXVII. of 1870, s. 11.

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W. Collins (33 Law J., M. C., 177) and the provisions of the Indian Penal Code explained.—REG 5. FRANCIS CASSIDY, 4 Bom. H. C. R. 17. [Couch, C.J., and Westropp, j. Dec. 23, 1867 J

A young Brahman widow was confined of a child. The chief constable of police, acting; as he stated, on information that the accused was about to kill a baby, went to search her house with a number of men, and found her lying on the first floor, and discovered on the second floor a living new-born child wrapped up in a cloth with a cooking pot turned over it. The Sessions Judge convicted the accused of attempt to murder. The High Court on appeal reversed the conviction, on the ground that the evidence was insufficient to support it. It was also held in this case that the chief constable's statement, that he "had information that the accused was about to kill the baby," was most improperly affinited as evidence against the accused. Action of the police censured. When a person abets the commission of an offence, and is present at the time when it is penmitted, he should be tried, under s. 114 of the Penal Code, for the same offence as the principal.—Reg. v. Chima, 8 Bom. H. C. R. 164. [Gibbs and West, J]. July 6,

In a case in which it was found that all the accused were guilty of rioting armed with deadly weapons, that the fight was premeditated and prearranged, a regular pitched battle or trial of strength between the two parties concerned in the riot, and that one of the accused, in the course of the riot, and in prosecution of the common object of the assembly, killed or attempted to kill a man under such circumstances that his act amounted to an attempt to murder, the question arose whether that act could be said to bear a less grave character by reason of excep 5 to s. 300 of the Penal Code. Per Curiam.—Held that, upon such finding, the case did not fall within the exception. Per Pigot, J. (Petheram, C.J., and Macpherson, J., concurring).—The 5th exception to s. 300 should receive a strict and not a liberal construction; and in applying the exception, it should be considered with reference to the act consented to or authorized, and next with reference to the person or persons authorized, and as to each of those some degree of particularity at least should appear upon the facts proved before the exception can be Shamshere Knan v. Empress (I. L. R., 6 Cal. 154) and Queen v. Kukier said to apply Mather (unreported) dissented from, so far as they decide that from such a finding as the above consent to take the risk of death is inferred. Per O'Kinealy, J.—Before excep 5 can be applied, it must be found that the person killed, with a full knowledge of the facts. determined to suffer death, or take the risk of death; and that this determination continued up to, and existed at, the moment of his death. Queen v. Kukier Mather (unreported) observed on. Per Ghose, J.—No general rule of law can be laid down in determining in cases of this description whether the person killed or wounded suffered death, or took the risk of death, with his own consent, it being a question of fact, and not of law, to be decided upon the circumstances of each case as it arises. Shamshere Khan v. Empress (I. L. R., 6 Cal. 154) and Queen v. Kukier Mather (unreported) observed on? and the propositions of law laid down therein concurred with.—QUEEN-EMPRESS v. NAYAMUDDIN, I. L. R., 18 Cal. 484. [Petheram, C.J., and Pigot, O Kinealy, Macpherson, and Ghose, JJ. May 19, 1891.

THE accused struck the deceased three blows on the head with a stick, with the intention of killing him. The deceased fell down senseless on the ground. The accused, believing that he was dead, set fire to the hut in which he was lying, with a view to remove all evidence of the crime. The medical evidence showed that the blows struck by the accused were not likely to cause death, and did not cause death, and that death was really caused by injuries from burning when the accused set fire to the hut. Held (Parsons, I., dissenting) that the accused was guilty of attempt to murder under s. 307 of the Penal Code. Per Parsons, I.—The accused was guilty of murder under s. 302 of the Penal Code.—QUEEN-EMPRESS v. KHANDU, I. L. R., 15 Bom. 194. [Sargent, C.J., and Birdwood and Parsons, JJ. Sep. 23, 1890.]

S. 511 of the Indian Penal Code does not apply to attempts to commit murder, which are fully and exclusively provided for by s. 307 of the said Act. A person is criminally responsible for an attempt to commit murder when, with the intention or knowledge requisite to its commission, he has done the last proximate act necessary to constitute the completed offence, and when the completion of the offence is only prevented by some cause independent of his volition.—QUEEN-EMPRESS v. NIDDHA, I. L. R., 14 All. 38. [Straight, J. Aug. 5, 1891.]

SECS. 308-312.] OFFENCES AFFECTING THE HUMAN BOR

Ct. of Ses-Cognizable. Warrant. Bailable. Not comp. Attempt to commit culpable under such circumstances, that, if he, bomicide not amounting to murder, shall be punished with impriate either description for a term which may extend to three years, or with both; and, if hurt is caused to any person by such act, shall be with imprisonment of either description for a term which may extend years, or with fine, or with both.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z under such circumthat, if he thereby caused death, he would be guilty of culpable homicide not and to murder. A has committed the offence defined in this section.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp. Attempt to commit suicide.

Attempt to commit suicide.

Attempt to commit suicide.

Attempt to commit suicide.

with simple imprisonment for a term which the commission of such offence, shall be privately as a suicide.

EVIDENCE that a woman prepared herself to commit suicide in the presence accused, that they followed her to the pyre, and stood by her, her step-sons "Ram! Ram!" and one of the accused admitting that he told the woman to say, Ram!" and she would become "suttee," proves active connivance and unequivote tenance of the suicide by the accused, and justified the inference that they had with her in a conspiracy for the commission of the suttee.—Queen v. Mohit 3 N.-W. P. 316. [Pearson, J. Sep. 6, 1871.]

R, WITH the intention of committing suicide by throwing herself into a we the well, where she was arrested. She was convicted under s. 309 of the Penal having attempted to commit suicide. Held that the conviction was illegal.—EMPRESS v. RAMAKKA, I. L. R., 8 Mad. 5. [Muttusami Ayyar, J. Oct. 11, 188]

A Kuluy

310. Whoever, at any time after the passing of this Act, she been habitually associated with any other or for the purpose of committing robbery of stealing by means of, or accompanied with, murder, is a thug.

Not bailable. Not comp.

Ct. of Ses. Cognizable.

Warrant.

Punishment.

· 811. Whoever is a thug shall be proched with transportation for life and shall also be table to fine.

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OF THE CAUSING OF MISCARRIAGE; OF INJURIES TO UNBORN CHILDRENG THE EXPOSURE OF INFANTS; AND OF THE CONCEALMENT OF BIRTHE

Ct. of Ses. Uncog. Warrant. Bailable. Not comp. 812. Whoever voluntarily causes a woman with child to miscar shall if such miscarriage be not caused in good the formula the purpose of saving the life of the words, be punished with imprisonment of either description for a term which the extend to three years, or with fine, or with both; and, if the woman is much

[&]quot;The words quoted have been substituted by Act VIII. of 1882, s. 7, for the and shall also be liable to fine."

of fortur in the wom

XVI.] OFFENCES AFFECTING THE HUMAN BODY. [Secs. 313-315.

hild, shall be punished with imprisonment of either description for a hich may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry is within the ng of this section.

ME offence defined in s. 312 can only be committed when a woman is, in fact, preg-To constitute the act of abetment, however, it is not necessary that the act should be committed. A, a woman, may fail involuntarily in causing abortion, ing pregnant; but B, who instigated her, believing her to be pregnant, may be of abetting an offence.—REG. v. KABUL PATTUR, 15 W. R. 4. [Kemp and Glover, m. 21,•1871.]

a case in which the child was full-grown, the Court declined to convict the acof causing miscarriage under s. 312, Penal Code—that section supposing an exof the child before the period of gestation is completed—but convicted them of mpt to cause miscarriage under ss. 312 and 511 read together.—Reg. v. Arunja 19 W. R. 32. [Glover and Mitter, J]. Feb. 4, 1873]

wowan is with child within the meaning of s. 312 of the Penal Code, as soon as pregnant. Held, therefore, where a woman was acquitted on a charge of causing to miscarry, on the ground that she had only been pregnant for one month, and there was nothing which could be called even a rudimentary foctus or child, that the tal was bad in law.—QUREN-EMPRESS v. ADEMMA, I. L. R., 9 Mad. 369. [Muttuyyar and Brandt, JJ. Mar. 20, 1886.]

113. Whoever commits the offence defined in the last preceding section Ct. of Ses. without the consent of the woman, whether the Uncog. ing miscarriage withwoman is quick with child or not, shall be punish- Not bailable. lan's consent. th transportation for life, or with imprisonment of either description for Not comp. which may extend to ten years, and shall also be liable to fine.

14. Whoever, with intent to cause the miscarriage of a woman with Ditto.

h caused by act done ept to cause miscardone without woman's

child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ars, and shall also be liable to fine; and if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above mentioned.

Explanation.—It is not essential to this offence that the offender should that the act is likely to cause death.

wen a poisonous drug was administered to a woman to procure miscarriage, and resulted, and it was not proved that the accused knew that the drug would be to cause death, &c., they were acquitted by the High Court of murder, and convictin offence under s. 314 of the Penal Code.—QUEEN v. KALACHAND GOPE, 10 W. [Phear and Hobhouse, JJ. Dec, 8, 1868.]

315. Whoever, before the birth of any child, does any act with the in- Ditto. tention of thereby preventing that child from being one with intent to pred being born alive, or eit to die after birth. born alive, or causing it to die after its birth, and does by such act prevent that cliffld from being live, or causes it to die after its birth, shall, if such act be not caused d faith for the purpose of saving the life of the mother, be punished imprisonment of either description for a term which may extend to ten , or with fine, or with both.

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SECS. 316, 317.] OFFENCES AFFECTING THE HUMAN BODY. [CHAP. X]

Ct. of Ses. Uncog. Warrant Not bailable. Not comp.

Ditto.

■ 316. Whoever does any act under such circumstances that, if he thereby caused death, he would be guilty of culpable homi-Causing death of quick uncide, and does by such act cause the death of a quick born child by an act amounting to culpable homicide. unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

Exposure and abandonment of child under twelve years by parent or person having care

817. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the of-

fender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

THE prisoner left her child, illegitimate and newly-born, near a road in a thorn-enclosure about 200 yards from the village. The child was found by a traveller, lived for about thirty hours, and then died. It was held that a conviction for murder could not be supported, as it might have been had the child been left on a barren heath or in an unfrequented place, but that the mother was guilty of abandonment under s. 317.—MUSSAM-MAT NANKI v. Crown, Panj. Rec., No. 23 of 1866.

Held that, where, from the circumstances, it appeared that a child who had been exposed by the prisoner did not die in consequence of the exposure, except in a remote degree, the prisoner, though guilty under s. 317 of the Penal Code, could not be convicted of murder. That section contemplates cases in which death is caused from cold or some other result of exposure.—Queen v. Khodabux Fakeer alias Khudiram Fakeer, 10 W. R. 52. [Loch and Glover, JJ. Nov. 19, 1868.]

WHERE the prisoner caused the death of her infant child by purposely abstaining from giving the deceased any nourishment, but did not part with the custody of, or abandon, the child, it was held that the prisoner was wrongly convicted of an offence under s. 317. and that the Sessions Judge, in convicting her under s. 304, should have specified the exception under s. 300 which applied to the case .- MUSSAMMAT RAM DAI v. CROWN, Panj. Rec., No. 18 of 1870.

S. 317 of the Penal Code was intended to prevent the abandonment or desertion by a parent of his or her children of tender years, in such a manner that the children, not being able to take care of themselves, may run the risk of dying or being injured—In re FELANI HARIANI, 16 W. R. 12. [Bayley and Paul, JJ. June 15, 1871.]

K was delivered of a child at the house of S, her mother, K's husband being then away in Kashmir. K's mother took the child to the house of K's husband's sister, and Placed the child naked at her feet or in her lap, saying, "This is your brother's child." S went away, and the child died some hours afterwards. It was held that S had not committed an offence under s. 317, nor had K abetted any such offence.—Crown v. Mussammat Khairo, Panj. Rec., No. 33 of 1872.

Accused, a married woman, eloped, leaving her child, 12 months old, being at the time supported by her milk, in the house of her husband, who was in charge of it jointly with her, who was under the same legal obligation to protect it, and who, the Magistrate found, was certain, as the mother knew, to take care of it. . It was held that there was not "a " leaving with the intention of wholly abandoning" the child within the meaning of a 317, and that the conviction was therefore unsustainable: — CROWN TO. MUSSAMMAT BRU-RAN, Panj. Rec., No. 5 of 1878.

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LXVI.1 OFFENCES AFFECTING THE HUMAN BODY.

FERRE a mother abandoned her child, with the intention of wholly abandoning it, owing that such abandonment was likely to cause its death, and the child died in ence of the abandonment, held that she could not be convicted and punished un-304 and also under s. 317 of the Penal Code, but s. 304 only.—EMPRESS v. BANNI, L, 2 All. 349. [Straight, J. Aug. 4, 1879.]

Accused, a married woman, quarrelled with her husband, and left his house for her s' house in another village, leaving her child, aged six months, in her husband's Her husband was not in the house at the time, but on his return shortly after he the door shut, his wife absent, and the child lying on the floor crying. He informed mbardar, who arranged for supplying milk for the child, and himself went to the to report the matter. It was held that, on the facts found, accused had not left her with the intention of wholly abandoning it within the meaning of s. 317, and that principle under that section was, therefore, not maintainable. Crown v. Mussammat (Panj. Rec., No. 5 of 1878) referred to and approved.—EMPRESS v. Mussammat An, Panj. Rec., No. 4 of 1879.

Ligar English law on the subject is 24 and 25 Vic., c. 100, s. 27. In order to sustain dictment under it, it is only necessary to prove that the defendant wilfully aband or exposed the child mentioned in the indictment; that the child was then under years of age; and that its life was thereby endangered, or its health had been or was likely to be permanently injured. The following facts were held to warrant a iction on an indictment framed on this section charging the prisoners with abandonand the prisoners was the mother of a weakly bastard child. When it was five weeks both the prisoners put the child in a hamper at S, wrapped up in a shawl, and packed shavings and cotton-wool, and the mother took the hamper from S to the bookingof the railway-station at M (a distance of about four miles), and there left it, having the carriage of the hamper to G. The hamper was addressed to the lodgings of the Is father at G, and he had told the mother, previous to the child's birth, that, if she it to him, he would keep it. The mother told the clerk at the station to be very all of the hamper, and to send it by the next train, which was done in ten minutes the time of its delivery at the station. Upon the address were the words: "With the bedelivered immediately." The hamper was, as above mentioned, duly sent by the delivered at its address in G in a little less than an hour from the time being despatched from M. On its being opened, the child was alive, and lived for weeks afterwards, when it died from causes not attributable to the conduct of the oners or either of them.--R. v. FALKINGHAM, L. R., 1 C. C. R. 222; 39 L. J. (M.C.) 47.

🐕 WOMAN, who was living apart from her husband, and who had the actual custody sir child, under two years of age, brought the child on the 19th October, and left it de the father's door, telling him she had done so. He knowingly allowed it to relying outside his door from about 7 P.M. till I A.M., when it was removed by a conbeing then cold and stiff. Upon this state of facts, it was held that, although the r had not the actual custody and possession of the child, yet, as he was by law bound evide for it, his allowing it to remain where he did was an abandonment and exposure e child by him, whereby its life was endangered, within the meaning of 24 and 25 e. 100, s. 27.—R. v. White, L. R., 1 C. C. R. 311; 40 L. J. (M.C.) 134.

318. Wheever, by secretly burying, or otherwise disposing of, the dead Ct. of Ses., body of a child, whether such child die before, or Presy. Mag., or Mag. of 1st isposal of dead body. after, or during, its birth, intentionally conceals or or 2nd class. avours to conceal the birth of such child, shall be punished with im-Cognizable. mment of either description for a term which may extend to two years, Bailable. ith fine, or with both.

Not comp.

CHARGE.—That you, on or about the , by secretly burying the body of your infant child, intentionally concealed the birth of such child, and that ave thereby, &c.—8 W. R., Cr. I., 4, No. 672 of 1867.

From a prosecution under s. 318 of the Penal Code, a person cannot be convicted of aling the birth of a child in the case of a mere fœtus four months old.—Pro., Aug. **59, 4** Mad. H. C. R., Ар., бз.

OF HURT.

REPORT OF THE INDIAN LAW COMMISSIONERS ON HURT.

Many of the offences which fall under the head of Hurt will also fall under the head of Assault. A stab, a blow which fractures a limb, the flinging of boiling water over a person, are assaults, and are also acts which cause bodily hurt. But bodily hurt may be caused by many acts which are not assaults. A person, for example, who mixes a deleterious potion, and places it on the table of another; a person who conceals a scythe in the grass on which another is in the habit of walking; a person who digs a pit in a public path, intending that another may fall into it, may cause serious hurt, and may be justly punished for causing such hurt. But they cannot, without extreme violence to language, be said to have committed assaults.

We propose to designate all pain, disease, and infirmity, by the name of hurt.

We have found it very difficult to draw a line between those bodily hurts which are serious, and those which are slight. To draw such a line with perfect accuracy is, indeed, absolutely impossible, but it is far better that such a line should be drawn, though rudely, than that offences, some of which approach in enormity to murder, while others are little more than frolics which a good-natured man would hardly resent, should be classed together.

We have, therefore, designated certain kinds of hurt as grievous.

We have given this name to emasculation to the loss of the sight of either eye-to the loss of the hearing of either ear—to the loss of any member or joint—to the permament loss of the perfect use of any member or joint-to the permanent disfiguration of the head or face-to the fracture and to the dislocation of bones. Thus far we proceed on sure ground. But a more difficult task remains. Some hurts which are not, like those kinds of hurt which we have just mentioned, distinguished by a broad and obvious line from slight hurts, may nevertheless be most serious. A wound, for example, which neither emasculates the sufferer, nor blinds him, nor destroys his hearing, nor deprives him of a member or a joint, nor permanently deprives him of the use of a member or a joint, nor disfigures his countenance, nor breaks his bones, nor dislocates them, may yet cause intense pain, prolonged disease, lasting

injury to the constitution. It is evidently desirable that the law should make a distinction between such a wound and a scratch which is healed with a little sticking plaster. A beating, again, which does not main the sufferer, or break his bones, may be so cruel as to bring him to the point of death. Such a beating, it is clear, ought not to be confounded with a bruise which requires only to be bathed with vinegal, and of which the traces disappear in a day.

After long consideration we have etermined to give the name of grievous hodily hurt to all hurt which causes the sufferer to be in pain, diseased, or unable to pursue his ordinary avocations, during the space of twenty days.

This provision was suggested to us by article 309 of the French Penal Code. That article runs thus: "Sera puni de la reclusion tout individu qui aura fait des blessures on porte des coups, s'il est resulte de ces actes de violence une maladie ou incapacite de travail personnel pendant plus de vingt jours." Reclusion, it is to be observed, signifies imprisonment and flard labour for a term of not less than five, nor more than ten, years

This law appears from the proces verbal of Napoleon's Council of State to have been adopted without calling forth a single *observation. But it has since been severely criticised by French jurists, and has been mitigated by the French legislature. Indeed, it ought to have been completely recast. For it is undoubtedly one of the most exceptionable laws in the Code.

A man who means only to inflict a slight hurt may, without intending or expecting to do so, cause a hurt which is exceedingly A push which to a man in health is a trifle may, if it happens to be directed against a diseased part of an infirm person. occasion consequences which the offender never contemplated as possible. A blow designed to inflict only the pain of a moment may cause the person struck to lose his footing, to fall from a considerable height. and to break a limb. In such cases to punish the assailant with five years of strict imprisonment would be in the highest degree unjust and cruel. It is said, and we can easily believe it that, in such cases, the French juries have frequently refused, in spite of the clearest evidence, to pronounce a decision

Locre: Législation de France, vol. 30, p. 362.

[†] Paillet: Manuel de Droit Français, Note on cl. 309 of the Penal Code.

REPORT OF THE INDIAN LAW COMMISSIONERS ON HURT-contd.

h would have subjected the accused to nishment so obviously disproportioned is offence.

e have attempted to preserve and to ad what is good in this article of the ch Code, and to avoid the evils which ave noticed. It appears to us that the th of time during which a sufferer is in diseased, or incapacitated from purhis ordinary avocations, though a ctive criterion of the severity of a hurt, till the best criterion that has ever devised. It is a criterion which may, that, with propriety, be employed, not alle in cases where violence has been used, in cases where hurt has been caused out any assault, as by the administration rugs, the setting of traps, the digging of falls, the placing of ropes across a road. though we have borrowed from the ch Code this test of the severity of bodipiuries, we have framed our penal proons on a principle quite different from by which the authors of the French Code r to have been guided. In apportionthe punishment, we take into considern both the extent of the hurt and the ntion of the offender.

Vhat we propose is that the voluntary in ion of simple bodily hurt shall be punishwith imprisonment of either description ch may extend to one year, or fine, or a; the voluntary infliction of grievous ily hurt with imprisonment of either cription for a term which may extend to years, and must not be less than six nths, to which fine may be added.

hese are the ordinary punishments. But re are certain aggravating and mitigatcircumstances which make a considere difference.

Where bodily hurt is voluntarily inflicted in attempt to murder the person hurt, we pose to punish the offender with transon for life, or with imprisonment for em which may extend to life, and cannot esthan seven years. It does not appear, us that, where the murderous intention is de out, the severity of the hurt inflicted circumstance which ought to be conin apportioning the punishment. It indoubtedly a circumstance which will important as evidence. A Court will netally be more easily same who has a standards intention of an assailant who has cally be more easily satisfied of the ctured a man's skull, than of one who has y caused a slight contusion. But the proof the complete. To take examples which universally known: Harley was laid up re than twenty days by the wound which

he received from Guiscard; the scratch which Damien gave Louis the Fifteenth was so slight that it was followed by no feverish symptoms. Yet it will be allowed that it would be absurd to make a distinction between the two assassins on this ground.

We propose that, when bodily hurt is inflicted by way of torture, the punishment shall be very severe. In England, happily, such a provision would be unnecessary. But the execrable cruelties which are committed by robbers in this country for the purpose of extorting property, or information relating to property, render it absolutely necessary We propose that in such cases, if the hurt inflicted be what we have designated as grievous, the offender shall be punished with transportation for life, or with imprisonment ' for a term which may extend to life, and which shall not be less than seven years. Where the hurt is not grievous, we propose that the imprisonment shall be for a term of not more than fourteen years, nor less than ! one year.

Bodily hurt may be inflicted by means the use of which generally indicates great malignity. A blow with the fist may cause as much pain, and produce as lasting injury, as laceration with a knife, or branding with a hot iron. But it will scarcely be disputed that, in the vast majority of cases, the offender who has used a knife or a hot iron for the purpose of wreaking his hatred is a far worse and more dangerous member of society than he who has only used his fist. It appears to us that many hurts which would not, according to our classification, be designated as grievous, ought yet, on account of the mode in which they are inflicted, to be punished more severely than many grievous We propose, therefore, that, where bodily hurt is voluntarily caused by means of any sharp instrument, of fire, of any heated substance, of any corrosive substance, of any explosive substance, of any poison, internal or external, or of any animal, the maximum of imprisonment may be increased, in cases of grievous bodily hurt, to fourteen years, in other cases, to three years.

In cases where bodily hurt is voluntarily caused on grave and sudden provocation, we propose to mitigate the punishment. This mitigation is common to cases of hurt and of grievous hurt. But voluntarily causing of grievous hurt on great and sudden provocation will still be punishable more severely than the voluntary causing of hurt not grievous on grave and sudden provocation. The provisions which we propose on this subject are framed on the same

REPORT OF THE INDIAN LAW COMMISSIONERS ON HURT-concid.

principles on which we have framed the law of manslaughter, and may be defended by the same arguments by which the law of

manslaughter is defended.

Hitherto we have been considering cases in which hurt has been caused voluntarily. But hurt may be caused involuntarily, yet There may have been no design culpably. to cause hurt, no expectation that hurt would be caused. Yet there may have been a want of due care not to cause hurt. For these cases of the involuntary yet culpable infliction of bodily hurt, we have provided rules which bear a close analogy to those which we have provided for cases of involuntary culpable homicide.

The provision contained in cl. 329 bears, it will be seen, a close analogy to those

contained in cls. 308 and 309. We have provided under the head of Assault for cases in which an assault is committed in an attempt to cause grievous bodily hurt. But there may be most malignant and atrocious attempts to cause grievous bodily hurt without any assault. For example, Z is directed to use a lotion for his eyes. A substitutes for that lotion a corrosive substance intending that it may destroy Z's eyesight. Again: A makes up a letter addressed to Z. and sends it to the post-office, having placed a strongly explosive substance under the seal, intending that the explosion may seriously injure Z. These are not assaults; yet they are evidently acts which deserve severe punishment, and that punishment is provided by cl. 329.

Hurt.

319. Whoever causes bodily pain, disease, or infirmity to any person, is said to cause hurt.

WHERE a wife died from a chance-kick on the spleen, inflicted by her husband on provocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself, and by his conduct immediately afterwards, that he had no intention or knowledge that the act was likely to cause hurt endangering human life, hald that the husband was guilty of an offence under ss. 319 and 324 of the Penal Code, and not of an offence under ss. 320 and 322. An admission by the husband in the presence of several witnesses that he had killed the wife, and that she died after receiving the kick, was held to be direct evidence against him. - QUEEN v. BYSAGOO NOSHVO. 8 W. R. 29. [Seton-Karr and Hobhouse, JJ. June 29, 1867.]

THE pain caused by a blow across the chest with an umbrella was held to be not of such a trivial character as to come within the meaning of the Penal Code, s. 95.-Govr. OF BENGAL v. SHEO GHOLAM LALLA, 24 W. R. 67. [Glover and Mitter, J]. Nov. 22. 1875.]

Grievous hurt.

320. The following kinds of hurt only are designated as "grievous:"

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.-Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

ATTEMPT at murder must not be confounded with causing grievous hurt with dangerous weapons. GHOLAM RUSSOOL v. CROWN, Panj. Rec., No. 32 of 1866.

THERE must be evidence to prove that hurt, as described in s. 320 of the Penal Colle as grievous hurt, has been caused before a conviction can be had under s. 320 of that Code.—Queen v. Kaminee Dassee, 12 W. R. 25. [Norman and Jackson, JJ. July 0] 1869.]



att; held that the prison caused yours host to mother and also to the 321 covers a case in wh a man interdang to aim a blow at one her ike, an Show ... 322 depends hunch on see 391 for to meaning and is not full is it CHAP. XVI.] OFFENCES AFFECTING THE HUMAN BODY. [SECS. 321-23.

821. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely Voluntarily causing hurt. thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

A DISABILITY for 20 days constitutes grievous hurt. A disability for a fortnight is enishable for voluntarily causing hurt.—Queen v. Bishnooram Surma, i W. R. 9. [Kemp and Glover, J. Aug. 30, 1864.]

WHERE a wife died from a chance-kick on the spleen, inflicted by her husband on provocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself, and by his conduct immediately afterwards, that he had so intention or knowledge that the act was likely to cause hurt endangering human life, It was held that the husband was guilty of an offence under ss. 319 and 321 of the Penal Codes and not of an offence under ss. 320 and 322.—QUBEN v. BYSAGOO NOSHYO, W. R. 29. [Seton-Karr and Hobhouse, JJ. June 29, 1867.]

822. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is Voluntarily cadising grievgrievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt ex-intention in the cept when he both causes grievous hurt, and intends or knows himself to be vocause grice. libely to cause grievous hurt. But he is said voluntarily to cause grievous hurt react? burt if, intending or knowing himself to be likely to cause grievous hurt of in Simple her is but municit one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

Rulings.

THE prisoners having abetted an assault, and murder having been committed, it was held, under the peculiar circumstances of the case, that they were guilty of grievous hurt, but not of abetment of murder.—QUREN v. GOLUCK CHUNG, 5 W. R. 75. [Campbell and Macpherson, JJ. April 28, 1866.]

WHERE A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured that he died, it was held that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—Queen v. DOORGESSUR SURMA, 7 W. R. 61. [Hobhouse, J. April 30, 1867.]

WHERE a wife died from a chance-kick on the spleen, inflicted by her husband on pro-ocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself, and by his conduct immediately afterwards, that he had no intention or knowledge that the act was likely to cause hurt endangering human life, kele that the husband was guilty of an offence under ss. 319 and 321 of the Penal Code, and not of an offence under ss. 320 and 322.—QUBEN v. BYSAGOO NOSHYO 8 W. R. 29. [Seton-Karr and Hobbouse, JJ. June 29, 1867.]

WHERE a prisoner was charged under ss. 304, 325, and 323, and the jury brought in a vardict of guilty under s. 335, it was held that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322, with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—QUEEN v. LUERINARAIN AGOORI, 23 W. R. 61. [Jackson and McDonell, JJ. April 8, 1875.]

823. Whoever, except in the case provided for by section 334, volun-Any Mag. Uncog. Uncog. Summons. Publishment for voluntarily multiple hurt.

ment of either description for a term which may Bailable, exhibit to one year, or with fine which may extend to one thousand rupees, Comp.

or with both.

[P. C. 42.] Digitized by Google

SEC. 323.] OFFENCES AFFECTING THE HUMAN BODY. [CHAP, XVI.

A DISABILITY for twenty days constitutes grievous hurt. A disability for a fortnight is punishable for voluntarily causing hurt.—QUEEN v. BISHNOORAM SURMA, I W. R. 9. [Kemp and Glover, JJ. Aug. 30, 1864.]

THE wounding of a thief by a chaukidar in order to effect his arrest held, under the circumstances, to be justifiable.—QUEEN v. PROTAB CHAUKIDAR, 2 W. R. 9. [Campbell and Glover, J]. Jan. 16, 1865.]

The prisoner and another were squabbling with the husband and son of the witness, Mussammat Mootka, at the door of the house. This witness from inside remonstrated and abused the prisoner. The prisoner then went inside the house, pulled the witness out by the hair of her head, threw her down, and stamped upon her chest and abdomes. She was 17 days in hospital, during three days of which, according to the deposition the medical officer, her life was in danger. Held that the hurt came under the eighth bead of the hurts which are described as grievous.—Queen v. Bassoo Rannah, 2 W. R. 29. [Kemp and Glover, J]. Jan. 30, 1865.]

In cases of hurt or grievous hurt the question should be considered as to who was the aggressor, and whether the offence was committed in the exercise of the right of private defence.—Queen v. Sohun, 2 W. R. 59. [Campbell and Jackson, JJ. April 10, 1865.]

THE prisoner, having received great provocation from his wife, pushed her with both arms so as to throw her with violence to the ground, and, after she was down, slapped her with his open hand. The woman died, and, on examination, it appeared that there were no external marks of violence on the body, but that there was a certain degree of disease of the spleen, and that death was caused by the rupture of the spleen. Under the above circumstances, the prisoner was held guilty of causing hurt, and not of culpable homiside not amounting to murder.—QUEEN v. PUNCHANUN TANTER, 5 W. R. 97. [Norman and Campbell, JJ. May 28, 1866.]

WHERE a person was tried and acquitted on a charge of using criminal force, be cannot afterwards be charged with committing hurt in respect of the same transaction.—
KAPTAN v. G. M. SMITH, 16 W. R. 3; 7 B. L. R., Ap., 25. [Bayley and Paul, JJ. June 7, 1871.]

Where a person scourged another with nettles in order to extract property from the sufferer, and the Magistrate tried the case as one of hurt (under s. 323) and extertion (s. 384), although the accused ought to have been charged under s. 327, and tried by the Court of Session, the High Court declined to interfere under s. 404, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 439, new Code of Criminal Procedure (Act X. of 1882), and directed a new trial, believing that substantial justice had been done in the case.—In the Matter of Tarinee Prosad Banerjee, 18 W. R. 8. [Kemp and Glover, JJ. June 14, 1872.]

Where, according to the prisoner's own confession (which was the only direct evidence against her), she, with a view to chastising the deceased, her daughter, 8 or 10 years of age, for impertinence, but without any intention of killing her, gave her a kick on the back and two slaps on the face, the result of which was death, held that the conviction should be under s. 323, Penal Code, of voluntarily causing hurt, and the punishment, one year's rigorous imprisonment.—Queen v. Beshor Bewa, 18 W. R. 29. [Kemp and Glover,]]. July 9, 1872.]

WHERE a prisoner was charged under ss. 304, 325, and 323, and the jury brought in a verdict of guilty under ss. 335, it was held that he was not acquitted of grievous hurt, but found guilty of the offence described in ss. 322, with the extenuating circumstances which would confine the punishment within the limits specified in ss. 335.—Quern v. Lukhinarain Agoori, 23 W. R. 61. [Jackson and McDonell, JJ. April 8, 1875.]

RIOTING, and hurt in the course of such rioting, are distinct offences, and each offence is separately punishable.—Empress v. Ram Adhin, I. L. R., 2 All. 139. [Pearson, J. Feb. 13, 1879.]

Where a person hurt another, who was suffering from spleen-disease, intentionally, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and by it act caused the death of such other person, it was held that he was properly convicted, under so, 323 of the Penal Code, of voluntarily causing hurt.—Empress v. Fox, I. L. R. 2 all 522. [Stuart, C.]. Dec. 16, 1879.]

. . . .

WHERE the facts found showed that death resulted from violence intentionally direclaid against the deceased by the accused, the Chief Court, on the revision side, altered the conviction from one under s. 304A to one under s. 323.- EMPRESS v. GANDA SINGH, Panj. Rec., No. 11 of 1880.

A PERSON, without the intention to cause death, or to cause such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, or the intention to cause grievous hurt, or the knowledge that he was likely by his act to cause grievous hurt, but with the intention of causing hurt, caused the death of another person by throwing a piece of brick at him, which struck him in the region of the spleen, Implured it, the spleen being diseased. Held that the offence committed was not the offence of causing death by a rash or negligent act, but the offence of voluntarily causing bust.—Empress v. Randhir Singh, I. L. R., 3 All. 597. [Oldfield, J. Mar. 7, 1881.]

Six accused persons were charged with, and convicted of, rioting, the common object of which was causing hurt to two particular men. Four of the accused were also charged with, and convicted of, respectively, causing hurt during the riot to the two men and a woman, and were sentenced to separate terms of imprisonment under ss. 147 and 323 of the Penal Code. Held that the sentences were legal. During the course of a riot, in which X was attacked and beaten by several of the rioters, one of them, K, inflicted grievous heart on X by breaking his rib with a blow struck with a lathi; K and three others of the rioters were charged with offences under ss. 147 and 325 of the Penal Code, and was convicted under those sections. The other three were convicted under s. 147, and also wader s. 325 read with s. 109. Separate sentences were passed on K, and also on the other three for each of the offences. Held that the sentences on K were legal, but that, as there was nothing to show that the other three had abetted the particular blow which caused the grievous hurt, although they had, each of them, assaulted X, the conviction of them, under s. 325 read with s. 109, could not be supported.—In the MATTER OF MONUR MIR v. THE QUEEN-EMPRESS AND IN THE MATTER OF KALI ROY v. THE QUEEN EMPRESS, I. L. R., 16 Cal. 725. [Trevelyan and Beverley, J]. June 12, 1889.]

824. Whoever, except in the case provided for bys-ection 334, volun- Ct. of Ses., tarily causes hurt by means of any instrument for Presy. Mag. Voluntarily Causing hurt by shooting, stabbing, or cutting, or any instrument or Mag. of ist daugerous weapons or means. which, used as a weapon of offence, is likely to cause death, or by means of Cognizable. fire or any heated substance, or by means of any poison or any corrosive Summons. substance, or by means of any explosive substance, or by means of any sub-Bailable.

Stance which it is deleterious to the human body to inhale, to swallow, or to permission stance which it is deleterious to the numerical body to make with imsecure into blood, or by means of any animal, shall be punished with imsecure into blood, or by means of any animal, shall be punished with imsecure for three years. prisonment of either description for a term which may extend to three years, by Court or with fine, or with both.

CAUSING hurt on grave and sudden provocation to the person giving the provocation is chargeable as an offence under s. 334, and not under s. 324.—REG. v. BHALA CHULA, I Boan. H. C. R. 17. [Sausse, C.J., and Forbes and Tucker, JJ. July 29, 1863.]

A PRISONER who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is putchable under s. 460, and not under ss. 457 and 324 of the Penal Code.—QUEEN v. LURRIUM Doss, 2 W. R. 52. [Jackson and Glover, JJ. April 1, 1865.]

THE offence of rioting armed with deadly weapons, and stabbing a person on whose premies the riot takes place, are distinct offences, and punishable as separate offences under sa. 148, 149, and 324 of the Penal Code, s. 149 being read as a proviso to s. 148.— QUEEN v. CALLACHAND, 7 W. R. 60. [Norman and Seton-Karr,]]. 1867.]

HELD that, where the prisoners were charged under s. 148 of the Penal Code of rioting armed with deadly weapons, and also under s. 324 of voluntarily causing hurt by dangerous weapons, they should have been sentenced only under one or other of these sections, the charges being, properly speaking, only alternative charges. The High Court setting to interfere with the reception by the Sessions Judge of the uncorroborated evidence of accomplices.—Quent o. DINA SHEIKH, 10 W. R. 63; 3 B. L. R. 15n. [Phear and Hobbouse, JJ. Dec. 15, 1868.]

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prosecution

SEC. 325.] OFFENCES AFFECTING THE HUMAN BODY. [CHAP. XVI.

UPON the construction of s. 324 of the Penal Code, held that it is not necessary that the manner of use (of the weapon) must be such as is likely to cause ceath.—Pro, Nov. 5, 1872, 7 Mad. H. C. R., Ap., 11.

UNDER s. 454 of the Criminal Procedure Code, 1872 (corresponding with s. 235 of the Code of 1882), the collective punishment awarded under se. 147, 148, and 324 of the Penal Code, must not exceed that which may be awarded for the graver offence.—In the MATTER OF JUBDAR KAZI; EMPRESS v. JUBDAR KAZI, I. L. R., 6 Cal. 718. [Mitter and

Maclean, JJ. Feb. 18, 1881.]

THE offences of rioting armed with a deadly weapon and voluntarily causing hurt with a dangerous weapon to two persons are distinct offences, and a person charged with such offences can be convicted and sentenced in respect of the rioting armed with deadly weapons under s. 148 of the Penal Code, and they were also charged, under s. 324 coupled with s. 149, with causing hurt by a dangerous weapon to X, and B was further charged under s. 324 with causing a like hurt to Y, A being also charged, under s. 324 coupled with s. 149, in respect of the hurt caused by B to Y. A and B were convicted on all charges, and separate sentences, to take effect in succession, were awarded in respect of each offence charged. The offences under s. 324 were committed during the riot. Held that the several acts, with regard to which the prisoners were charged, did not fall within the provisions of s. 71 of the Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that consequently, under s. 235 of the Criminal Procedure Code, the several sentences passed were strictly legal.—Loke NATH SIRCAR v. Queen-Empress, I. L. R. 11 Cal. 340. [Tottenham and Ghose,]]. Mar. 6, 1885.]

Four persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon, who went with a warrant for his arrest, accompanied by other persons, A and B, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon, and another by means of a dangerous weapon on A. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section, and two months' rigorous imprisonment under the latter. He further convicted one of the accused of an offence under s. 324 in respect of the assault on A, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry of the other. Held that the offence of rioting was completed by the assault on A, and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure. Held, further, that, even if A had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were legal, inasmuch as the acts of the accused, taken separately, constituted offences under ss. 143 and 353 of the Penal Code and, combined, an offence under s. 147; and, under s. 235, sub-s. 3, of the Code of Criminal Procedure, the accused might be charged with, and tried at one trial for, the offence under s. 147, and those under ss. 143 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code, as amended by s. 4 of Act VIII. of 1882, which limit had not been exceeded in the present case.—In the Matter of Chandra Kant Bhattacharjee v. Queen-Empress, I. L. R., 12 Cal. 495. [Mitter and Beverley,]]. Dec. 11, 1885.]

SEPARATE sentences passed upon persons for the offences of rioting and grievous hurt are not legal where it is found that such persons individually did not commit any act which amounted to voluntarily causing hurt, but were guilty of that offence under s. 149 of the Penal Code. Empress v. Ram Partab (I. L. R., 6 All. 121) approved. Loke Nath Sircar v. Queen-Empress. (I. L. R., 11 Cal. 349) overruled.—NILMONEY PODDAR v. QUEEN-EMPRESS, I. L. R., 16 Cal. 442. [Petheram, C.J., and Mitter, Prinsep, Wilson, and Tottenbam, J]. Mar. 21, 1889.]

825. Whoever, except in the case provided by section 335, voluntarily
Punishment for voluntarily
causing grievous hurt.

Causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

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CHAP. XVI.] OFFENCES AFPECTING THE HUMAN BODY. [Sec. 325.

CHARGE.—That you, on or about the day of , at , voluntarily caused grievous furt to , and thereby committed an offence punishable under s: 325 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXVIII. (II.).

In their 1st Report, the Indian Law Commissioners remark as follows: "An injury to the right hand may, in the case of a clerk, keep him from his work for 20 days, which, if it happened to the left hand, would be of no consequence. An injury to the foot may prevent one man from collowing his business in which walking is necessary, which, if it happened to another man in a sedentary employment, would not interrupt him at all. The proposed criterion is therefore unsatisfactory, but some criterion is necessary, and it is difficult to devise a better."

In their 1st Report, the Indian Law Commissioners also remark as follows: "We agree with Mr. Bacon in what we conceive to be his meaning as to the duty of the Judge—that is to say, that he is not to trouble himself with seeking for direct proof of what the offender thought was likely to happen, but is to learn it from the nature of his act, taking him, to have intended grievous hurt, or at least to have contemplated it as likely to occur, where he did what everybody knows is likely to cause grievous hurt, and the more certainly drawing his conclusion, when there is evidence of previous enmity against the party who has suffered. If the act was such that nothing more than simple hurt could reasonably be thought likely to ensue from it, then, although grievous hurt may unexpectedly have ensued, it would be his duty to convict the offender of simple hurt conly under cl. 323, judging that grievous hurt was not in contemplation; for, according to cl. 322, a person can be convicted of grievous hurt only when the result and the intention correspond, or when grievous hurt has been suffered from an act which was intended to cause grievous hurt, though it may be of a different kind."

THE offence of voluntarily causing grievous hurt is punishable by imprisonment, to which fine may be added; and not imprisonment or fine.—QUEEN v. MENAZOODIN, 2 W. R. 33. [Kemp and Glover,]]. Feb. 6, 1864.]

A BISABILITY for 20 days constitutes grievous hurt. A disability for a fortnight vis punishable for voluntarily causing hurt.—QUEEN v. BISHNOORAM SURMA, I W. R. 9. [Kemp and Slover, JJ. Aug. 30, 1864.]

THE offence of voluntarily causing grievous hurt is punishable, not by fine alone, but by imprisonment, the offender being also liable to fine.—QUEEN v. SHARODA PESHAGUR, 2 W. R. 32. [Kemp and Glover, JJ. Feb. 3, 1865.]

WHEN there is neither intention, knowledge, nor likelihood, that the injury inflicted in an assault will, or can, cause death, the offence is not culpable homicide not amounting to murder, but grievous hurt.—QUBEN v. MEGHA MEEAH alias JUCKON MEEAH, W. R. 39 [Kemp and Glover, JJ. Mar. 8, 1865.]

In cases of hurt or grievous hurt, the question should be considered as to who was the aggressor, and whether the offence was committed in the exercise of the right of private defence.—QUEEN v. SOHUN, 2 W. R. 59. [Campbell and Jackson, JJ. April 10, 1865.]

HELD, by the majority of the Court (Seton-Karr, J., dissenting), that the offence of administering deleterious drugs, when life was not endangered, is punishable under s. 328, Penal Code, and not as for grievous hurt under s. 326.—QUEEN v. JOYGOPAL alias JUNGLEE, 4 W. R. 4. [Loch, Kemp, and Seton-Karr, J]. Sep. 8, 1865.]

THE amount of punishment for cutting off a wife's nose for intriguing with another man depends on the time of the commission of the grievous hurt, whether at the instant, or long after, the husband found himself dishonoured.—QUEEN v. SULAMUT RUSSOOA, 4 W. R. 17. [Glover, J. Oct. 24, 1865.]

A SESSIONS JUDGE has no authority to interfere and direct a commitment in the case of a conviction for assault under s. 352 or of hurt under s. 323 of the Penal Code, both of them being offences triable by the subordinate Court. When the result of a joint attack by several persons on one party is fracture of the arm of the party assaulted, the offence committed is grievous hurt, and not assault; and, as the attack was made in furtherance of a common object, all are equally guilty of the same offence.—Queen v. Ramtohull Singer, 5 W. R. 12. [Kemp and Glover, J]. Jan. 16, 1866.]

. WHERE bone-fractures have been caused in addition to other injuries, the offence committed is grievous hurt triable by a Court of Session, and not hurt cognizable by a

SBC. 325.] OFFENCES AFFECTING THE HUMAN BODY. [CHAP. XVI.

Magistrate.—Queen v. Ramtohul Singh, & W. R. 65. [Jackson and Glover, JJ. April 4, 1866.]

• The prisoners having abetted an assault, and murder having been committed, held under the peculiar circumstances of the case, that they were guilty of abetment of grievous hurt, and not abetment of murder.—QUEEN v. GOLUCK CHUNG, 5 W. R. 75. [Campbell and Macpherson, J]. April 28, 1866.]

WHERE, in a case of robbery attended with death, there was no intention of causing death or such bodily injury as was likely to cause death, the connection was altered from voluntarily causing hurt in committing robbery to voluntarily causing grievous hurt in committing robbery.—Queen v. Chakor Haree, 6 W. R. 16. [Kemp and Seton-Kar, J]. June 30, 1866.]

WHERE A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured as to have died in consequence, held that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—QUEEN v. DOORGESSUR SURMAH, 7 W. R. 61. [Hobbouse, J. April 30, 1867.]

To establish a charge of grievous hurt, it is not necessary to prove that the accused struck the complainant so severely as to endanger the latter's life.—QUEEN v. PURMANUND DEHULIA alias PURMESHUR, 18 W. R. 22. [Glover, J. June 25, 1872.]

THE High Court, in exercise of the powers conferred on it by s. 280 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 423 of the new Code of Criminal Procedure (Act X. of 1882), altered the conviction in this case by the Sessions Judge from grievous hurt into one for murder, and enhanced the punishment accordingly.—QUEEN v. SUPFIRUDDI PALWAN, 22 W. R. 5; 13 B. L. R., Ap., 23. [Kemp and Birch, JJ. April 22, 1874.]

WHERE a prisoner was charged under ss. 304, 325, and 323 of the Penal Code, and the jury brought in a verdict of guilty under s. 325, held that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322 with the extenuating circumstances which would confine the punishment within the limits specified in s. 335—QUEEN v. LUKHINARAIN AGOORI, 23 W. R. 61. [Jackson and McDonell, JJ. April 8, 1875.]

To make out the offence of voluntarily causing grievous hurt under s. 325, Penal Code, there must be some specific hurt voluntarily inflicted, and coming within some of the eight kinds enumerated in s. 320.—QUEEN v. BUDRI ROY, 23 W. R. 65. [Jackson and McDonell, J]. April 23, 1875.]

An accused struck a woman, carrying an infant in her arms, violently over the head and shoulders. One of the blows fell on the child's head, causing death. Held that the accused had committed hurt on the infant under circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt.—In re EMPRESS & SAHAE RAE, I. L. R., 3 Cal. 623; 2 C. L. R. 30. [Markby and Prinsep, JJ. April 18, 1878.]

B VOLUNTARILY caused hurt to N, who was suffering from spleen-disease, knowing himself to be likely to cause grievous hurt, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and caused grievous hurt to N, from which N died. Held that B ought not to be convicted, under s. 304A of the Penal Code, of causing death by negligence, but, under s. 325 of that Code, of voluntarily causing grievous hurt—Empress v. O'Brien, I. L. R., 2 All. 766. [Stuart, C.J., and Spankie, J. Mar. 6. 1880.]

The accused were charged, under s. 149 coupled with s. 325 of the Penal Code, with, while being members of an unlawful assembly, committing grievous hurt. The jury disbelieved the evidence as to the unlawful assembly, but unanimously found two of the accused guilfy of grievous hurt under s. 325 Held that such verdict was, under s. 457 of the Code of Criminal Procedure, 1872 (corresponding with s. 238 of the new Code of Criminal Procedure, 1882), legally sustainable, although that offence did not form the subject of a separate charge. S. 457 enables a verdict to be given on some of the facts which are a component part of the original charge, provided that those facts constitute a minor offence. It is only in a case where the jury are not unanimous that a Court may require them to retire for further consideration. Where a verdict is unanimous, it must be received by the Judge, unless contrary to law. Where a Judge dissents from the unanimous finding of a jury given in accordance with the law, the only procedure open to him to follow is that laid down in the fifth clause of s, 263 of the Code of Criminal

MAR. XVI.] OFFENCES AFFECTING THE HUMAN BODY. [Sec. 325.

basedure (Act X. of 1872), corresponding with s. 307 of the new Code of Criminal Proadure (Act X. of 1882).—Govt. of Bengal v. Mahamdi, I. L. R., 5 Cal. 871; 6 C. L. R. (Morris and Prinsep, JJ. May 20, 1880.)

Where a person struck another a blow, which caused death, without any intention of suning death, or of causing such bodily injury as was likely to cause death, or the knowsize that he was likely by such act to cause death, but with the intention of causing
sizewas hurt, held that the offence of which such person was guilty was not the offence
samping death by a rash act, but the offence of voluntarily causing grievous hurt. Nilementi Nagabhushandm (7 Mad. H. C. R. 119), Queen v. Pember (5 N.-W. P. 38),
luces v. Man (5 N.-W. P. 235), Empress v. Ketabdi Mundul (1. L. R., 4 Cal. 764),
impress v. Fox (1. L. R., 2 All. 522), Empress v. O'Brien (1. L. R., 2 All. 766), followed.
The affences of murder, culpable homicide not amounting to murder, and causing death
y a rash or negligent act, distinguished.—Empress v. Idu Beg, I. L. R., 3 All. 776.
[Straight, J. Aug. 12, 1881.]

A MEMBER of an unlawful assembly, some members of which have caused grievous turt, caanot lawfully be punished for the offence of rioting as well as for the offence of maining grievous hurt.—Empress v. Ram Partab, I. L. R., 6 All. 121. [Straight, J. Dec. 5, 1883.]

THREE persons, who were convicted (i) of riot under s. 147 of the Penal Code, (ii) of causing grievous hurt in the course of such riot, were respectively sentenced to six months? rigorous imprisonment under s. 147, and three months' rigorous imprisonment under s. 235. Held, by Petheram, C.J., and Straight and Tyrrell, J., that, inasmuch as the evidence upon the record showed that the three prisoners had committed individual acts of violence with their own hands which constituted distinct offences of causing grievous hurt or hurt separate from, and independent of, the offence of riot, which was already completed, and the fact of the riot was not an essential portion of the evidence necessary to establish their legal responsibility under s. 325 of the Penal Code, the separate sentences passed under ss. 147 and 325 were not illegal. Queen-Empress v. Ram Partab (I. L. R., 6 All. 121) distinguished. Per Brodhurst, J., that the evidence showed that only one of the three prisoners had caused grievous hurt with his own hands, and that the others could only be properly convicted of that offence under the provisions of s. 149 of the Penal Code, but that the separate sentences passed under ss. 147 and 325 were not illegal. Queen-Empress v. Dungar Singh (I. L. R., 7 All. 29) followed. Also per Brodhurst, J.—Ill. g of s. 235 of the Criminal Procedure Code does not apply merely to the case of persons who, in addition to the offence of rioting, have, with their own hands, committed the further offences of voluntarily causing grievous hurt, and of assaulting a public servant when engaged in suppressing a riof; and the convictions referred to in the illustration relate especially to convictions obtained under the provisions of s. 149 of the Penal Code.—Queen-Empress v. Ram Sarup, I. L. R., 7 All. 757. [Petheram, C.J., and Straight, Brodhurst, and Tyrrell, JJ. May 12, 1885.]

S. 149 of the Penal Code creates no offence, but was intended to make it clear that an accused person whose case falls within its terms cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the commen object of the unlawful assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object. In prosecution of the common object of an unlawful assembly, M, with his own hand, caused grievous hurt. M and other members of the assembly, as to whom it did not appear whether or not any of them personally used force or violence, were convicted of rioting under s. 147 and grievous hurt under s. 325 of the Penal Code, and were each sentenced to separate terms of imprisonment for each offence. The highest aggregate punishment, which was M's, was six years' rigorous imprisonment, being one year for rioting and five years for causing greyous hurt. Held that, assuming s. 71 of the Penal Code to be applicable, the sentences were not illegal, as the combined periods of imprisonment did not, in the case of any prisoner, exceed the maximum punishment of seven years' rigorous imprisonment which could have been awarded for the offence punishable under s. 325. Held also that the rist could not, in any of the cases, be considered a part of the offence under s. 325, that s. 71 did not apply, and that the sentences were legal. Queen-Empress v. Ram Partid (I. L. R., 6 All. 121) dissented from. Queen-Empress v. Dungar Sing (I. L. R., 7 Ml. 29), Queen-Empress v. Ram Sarup (I. L. R., 7 All. 757), Queen v. Rubbee-oollah (7 M. R. 13), Loke Nath Sarkar v. Queen-Empress (I. L. R., 11 Cal. 349), Queen-Em-Press v. Pershad (I. L. R., 7 All. 414), Chandra Kant Bhattacharjee v. Queen-Empress

*(I. L. R., 12 Cal. 498), and Reg. v. Tukaya bin Tamana (I. L. R., 1 Bom. 214), return to.—QUEEN-EMPRESS v. BISHESHAR, I. L. R., 9 All. 645. [Edge, C. J., and Brodhust, May 16, 1887.]

Six accused persons were charged with and convicted of rioting, the common ship of which was causing hurt to two particular men. Four of the accused were also det with, and convicted of, respectively, causing hurt during the riot to the two men woman, and were sentenced to separate terms of imprisonment under ss. 147 and the Penal Code. Held that the sentences were legal. During the course of a which X was attacked and beaten by several of the rioters, one of them, K inflicted gri ous hurt on X by breaking his rib with a blow struck with a lathi; K and three oth the rioters were charged with offences under ss. 147 and 325 of the Penal Code, as was convicted under those sections. The other three were convicted under s. 147, 4 so under s. 325 read with s. 109. Separate sentences were passed on K and also other three for each of the offences. Held that the sentences on K were legal, but the as there was nothing to show that the other three had abetted the particular blow wi caused the grievous hurt, although they had each of them assaulted X, the conviction them, under s. 325 read with s. 109, could not be supported.—IN THE MATTER OF MOU MIR v. THE QUEEN-EMPRESS AND IN THE MATTER OF KALI ROY v. THE QUEEN-EMPRES I. L. R., 16 Cal. 725. [Trevelyan and Beverley,]]. June 12, 1889.]

THE accused were charged before a Magistrate of the second class with causing pricous hurt as members of an unlawful assembly under ss. 149 and 325 of the Penal Co The evidence showed that one of the accused had used an axe in causing the hurt. Magistrate apparently ignored this fact, and he convicted the accused under s. 325 of \$ Code. The accused appealed. The District Magistrate who heard one appeal, and First-class Magistrate who heard the rest of the appeals, were both of opinion that offence committed by the accused was one of causing grievous hurt with a danger weapon within the meaning of s. 326 of the Penal Code, and, as such, beyond the just tion of the Second-class Magistrate. But they did not think it proper, under the chro Stances of the case, to quash the convictions. The Sessions Judge, on examining record of the case, was of opinion that, as the offence committed by the accused cognizable by the trying Magistrate, his proceedings were void ab initio*under s. 53 the Criminal Procedure Code. He, therefore, referred the case to the High Count, recommended that the convictions under s. 325 should be set aside. Held that the ceedings before the Second-class Magistrate were not void ab initio as he had just tion to try the accused for offences punishable under ss. 149 and 325 of the Penal C with which they were originally charged. Held, also, that, though it was the duty of trying Magistrate, when the evidence disclosed a circumstance of aggravation, such the use of a dangerous weapon, which made the offence cognizable by a higher Court adopt the proper procedure to send the case to the higher Court, still it was not necess to quash the proceedings, as the accused were not in any way prejudiced, and the s tences were not inadequate.—QUBEN-EMPRESS v. GUNDYA, I. L. R., 13 Bom. 502. [Jard and Candy, JJ. Jan. 28, 1889.]

THE prisoner, a fully-developed adult man, was charged with causing the death his wife, a girl aged about 11 years and 3 months, who had not attained puberty. I death was caused by hæmorrhage from a rupture of the vagina caused by the prist having sexual intercourse with the girl. For the defence, it was alleged that he had sexual intercourse with the girl on several previous occasions without injury to her, there were circumstances in the case which showed that this was possible, and even improbable, though the medical evidence was to the effect that, if such intercourse previously taken place the penetration was probably not so complete or with so a sexual vigour as on the occasion when the injury was caused. The medical evidence further to the effect that the girl had not attained puberty, and was immature and w unfit for sexual intercourse; that, under such circumstances, sexual intercourse bet the prisoner and the girl was likely to be dangerous to her, and to cause injuries more less serious according to the degree of penetration effected. The prisoner was ch with (a) culpable homicide not amounting to murder under s. 304 of the Penal Code; causing death by doing a rash and negligent act under s. 304A; (c) voluntarily ca grievous hurt under s. 325; and (d) causing grievous hurt by doing an act so rashing negligently as to endanger human life or the personal safety of others under s. 33%. that, in such a case, when the girl is a wife and above the age of 10 years, and when the fore the law of rape does not apply, it by no means follows that the law regards the

CHAP. XVI.] OFFENCES AFFECTING THE HUMAN BODY. [Secs. 326, 327.

as a thing made over to be the absolute property of her husband, or as a person outside the protection of the criminal law; that no hard-and-fast rule can be laid down that sexual intercourse with a girl under a certain age must be regarded as dangerous and punishable, or over that age as safe and right, but that each case must be judged according to its own individual circumstances; that in such a case the jury have to consider and say whether, under the particular circumstances of the case, having regard to the physical condition of the girl, and to the intention, the knowledge, the degree of rashness or negligence with which the accused is shown to have acted on the occasion in question, he has brought buself within any of the provisions of the criminal law. Held, further, that, if the jury were of opinion (a) that the act of the prisoner caused the death of the girl, that is to say, that the act of cohabitation on the part of the prisoner had the effect of rupturing the ngina, and so causing the hæmorrhage which led to her death; (b) that the act of coha-litation between a fully-developed man like the prisoner and an immature girl like his was itself a thing likely to lead to dangerous consequences; (c) that that act was one of such a character as to indicate a reckless indifference to the welfare of the girl or a must of reasonable consideration about what the prisoner was doing, one which the hushand of the girl, if he had had a reasonable regard to her welfare, and had exercised reasonable thought as to the act he contemplated doing, would have abstained from doing, they would be justified in finding that the prisoner caused the death of the girl by a rash and negligent act. Under no system of law with which Courts have to do in this country, whether Hindu or Mahomedan, or that framed under British rule, has it ever been the law that a husband has the absolute right to enjoy the person of his wife without regard to the question of safety to her.—QUBEN-EMPRESS v. HURREE MOHUN MYTHEE, I. L. R., 18 Cal. 49. [Wilson, J. July, 1890.]

Voluntarily causing griev-causes grievous hurt by means of any instrument or Mag., or Ses., when the dangerous weap-for shooting, stabbing, or cutting, or any instrument or Mag. of the second stabbing, or cutting, or any instrument or Mag. of the second stabbing, or cutting, or any instrument or Mag. of the second stabbing, or cutting, or any instrument or Mag. of the second stabbing, or cutting, or any instrument or Mag. of the second stabbing, or cutting, or any instrument or mag. of the second stabbing stabbing stabbing, or cutting, or any instrument or mag. of the second stabbing stabbi ment which, used as a weapon of offence, is likely Cognizable. to cause death, or by means of fire or any heated substance, or by means of Summons. Not bailable. my poison or any corrosive substance, or by means of any explosive substance, Not comp. or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable

THE offence of administering deleterious drugs, when life was not endangered, is punshable under s. 328, Penal Code, and not as for grievous hurt under s. 326.—QUEEN v. OYGOPAL alias JUNGLEE, 4 W. R. 4. [Kemp and Seton-Karr, J]. Sep. 8, 1865.]

WHEN a prisoner is convicted of rioting and of hurt, and the conviction for hurt kepends upon the application of s. 149 of the Penal Code, it is illegal to pass two sen-Exces, one for riot and one for hurt. But in such a case the two sentences would be legal, rovided the total punishment does not exceed the maximum which the Court might pass or any one of the offences. When, however, the accused is guilty of rioting, and is also ound to have himself caused the hurt, he may be punished both for rioting and for hurt: n such a case the total punishment can legally exceed the maximum which the Court night pass for any one of the offences. Queen-Empress v. Ram Sarup (I. L. R., 7 All, 57) approved.—QUEEN-EMPRESS v. BANA PUNJA, I. L. R., 17 Bom. 260. [Sargent, C.J., ad Parsons and Telang, JJ. Dec. 19, 1892.]

827. Whoever voluntarily causes hurt for the purpose of extorting from Ct. of Ses... the sufferer, or from any person interested in the Cognizable. sufferer, any property or valuable security, or of Not bailable. Voluntarily causing hurt to tiort property, or to conconstraining the sufferer or any person interested in Not comp. ach sufferer to do anything which is illegal, or which may facilitate the comchains of an offence, shall be punished with imprisonment of either destiption for a term which may extend to ten years, and shall also be liable to

Br. heing stolen, port poison into the port contains of the port contains of the port contains of the same his arm have partaken of the same his arm with secs. 328-330.] OFFENCES AFFECTING THE HUMAN BODY. [CHAP. XVI.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Pena! Code.

• Where a person scourged another with nettles in order to extract property from the sufferer, and the Magistrate tried the case as one of hurt (under s. 323? Penal Code) and extortion (s. 384) although the accused ought to have been charged under s. 327, and tried by the Court of Session, the High Court declined to interfere under s. 404, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 439, new Code of Criminal Procedure (Act X. of 1882), and direct a new trial, believing that substantial justice had been done in the case.—In the Matter of Tarinee Prosaud Banerjee, 18 W. R. & [Kemp and Glover, J]. June 14, 1872.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

Causing hurt by means of poison, &c., with intent to commit an offence.

Ditate the commission of, an offence, or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

THE words "or other thing" in s. 328 of the Penal Code must be referred to the preceding words, and be taken to mean "unwholesome thing," and not other thing simply—In the Matter of Jotee Ghoraee, 1 W. R. 7. [Kemp and Glover, J]. Aug. 18. 1864.]

THE offence of administering deleterious drugs, when life was not endangered, is punshable under s. 328, Penal Code, and not as for grievous hurt under s. 326.—QUEEN D. JOYGOPAL alias JUNGLEE, 4 W. R. 4. [Kemp and Seton-Karr, JJ. Sep. 8, 1865.]

ecame my (1) (above) Held that a person, who placed in his toddy-pots juice of the mill:-bush, knowing that if taken by a human being, it would cause injury, and with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from such pots, and which toddy was drunk by, and caused injury to, certain soldiers who purchased it from an unknown vendor, was rightly convicted, under s. 328 of the Penal Code, of "causing to be taken an unwholesome thing with intent to cause injury," and that s. 81, which says that "if an act be done without any criminal intention to cause harm, it is not an offence," did not apply to the case.—Reg. v. Dhania Daji, 5 Bom. H. C. R. 59. [Newton and Tucket, JJ. July 23, 1868.]

Ditto.

Voluntarily causing grievous hurt for the purpose of extort Voluntarily causing grievous hurt to extort property or to constrain to an illegal act. in such sufferer, to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

In this section the word "offence" denotes a thing punishable under this Code, ounder any especial or local law as defined in this Code,—S. 40, Penal Code.

Ct. of Ses. 2 Cognizable. Warrant. Bailable. Not comp.

Voluntarily causing hurt to extort confession or to compel restoration of property.

duct, or for the purpose of constraining the sufferer or any person interested in the sufferer or form any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or miscon duct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore, or to cause the restoration of, any property or valuable

security, or to satisfy any claim or demand, or to give information which ma

forcing

330]

CEAP. XVI.] OFFENCES AFFECTING THE HUMAN BODY. [SECS. 33], 342.

lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven vears, and shall also be liable to fine.

Illustrations.

- (a.) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.
- (A.) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.
- (c.) A, a revenue-officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.
- (d.) A, a zemindar, tortures a raiyat in order to compel him to pay his rent. A is 5./20, 6.5guilty of an offence under this section.

Rulings.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

To bring a case under s. 330 of the Penal Code it must be proved that the hurt to the complainant was caused with intent to extort a confession of some offence or miscondust sunishable under the Penal Code. That section, therefore, does not apply to a case where the confession extorted had reference to a charge of witchcraft.—QUESN v. BABOO MOONDU, 13 W. R. 23. [Kemp and Jackson, J]. Feb. 12, 1870.]

A CHARGE may be made under s. 330 of causing hurt for the purpose of extorting information which might lead to the detection of an offence, even if the supposed offence has not been committed. The offence which that section intended to describe is that of inducing a person by hurt to make a statement or a confession, having reference to as offence, or misconduct; and whether that offence or misconduct has been committed is wholly immaterial.—Queen v. Nim Chand Mookerjee, 20 W. R. 41. [Markby and Birch, JJ. June 27, 1873.]

BB, in order to constrain his wife to satisfy his demand that she should return to his house, voluntarily caused hurt to her. He was convicted under s. 330 of the Penal Code. Held, on appeal, that the conviction under that section was bad.—QUEEN-EM-PRESS W. ELLA BOYAN, I. L. R., 11 Mad. 257. [Kernan and Brandt, J]. Aug. 9, 1887.]

881. Whoever voluntarily causes grievous hurt for the purpose of extort-Ct. of Ses. Cognizable. ing from the sufferer, or from any person interested Warrant. Voluntarily causing grievin the sufferer, any confession or any information Not bailable. ous hurt to extort confession, for to compel restoration of which may lead to the detection of an offence or Not compproperty. misconduct, or for the purpose of constraining the

sufferer or any person interested in the sufferer to restore or to cause the remoration of, any property or valuable security, or to satisfy any claim or demand, or lo give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

832. Whoever voluntarily causes hurt to any person being a public ser. Ct. of Ses., Presy. Mag., vant in the discharge of his duty as such public ser- or Mag. of 1st Voluntarily causing hurt to ster public servant from his vant, or with intent to prevent or deter that person class. or any other public servant from discharging his Warrant. mity as such public servant, or in consequence of anything done or attempted Bailable. be done by that person in the lawful discharge of his duty as such public Not comp. execute shall be punished with imprisonment of either description for a term. which may extend to three years, or with fine, or with both.

SECS. 333, 334.] OFFENCES AFFECTING THE HUMAN BODY. [CHAP. XVI.

Eight persons, who were charged with a number of others, were tried on various charges consisting of rioting armed with deadly weapons (s. 148, Penal Code), assaulting or obstructing a public servant when suppressing a riot (s. 152), and voluntarily cassing hurt and grievous hurt to deter a public servant from his duty (ss. 332 and 333). The common object set out in the charge was "to resist the execution of a decree obtained by Suresh Chunder Deb against Shaik Ali Yar in the Court of the Second Subordinate Jadge of Alipore, dated 30th April 1891, and also by means of criminal force, or show of crimitnal force, to overawe the members of the police-force in the execution of their lawful powers as police-officers," and it was held that resistance to the police was one of the component parts of the offence of rioting charged. At the trial in the Court of Session all eight accused were convicted of the offence charged under s. 148, and each was sentenced to the maximum punishment allowed under that section, vis., three years' rigorous imprisonment. Seven out of the eight were convicted of offences under s. 152, and sentenced each to an additional term of two years' rigorous imprisonment for those offences. out of the seven accused were further convicted of offences under s. 332 of the Penal Code, the hurt therein charged being caused to police-officers engaged in suppressing the riot, and each sentenced to a further additional term of two years' rigorous imprisonment for that offence. The eighth accused who was not convicted of an offence under s. 152 was convicted of an offence under s. 333, the grievous hurt being similarly caused to a police-officer, and for that offence was sentenced to five years' rigorous imprisonment in addition to the sentence of three years passed on him under s. 148. It was contended on appeal—(1) that the sentences passed under s. 152 in addition to those under s. 148 were illegal; (2) that separate sentences under s. 152 and ss. 332 and 333 were illegal; (3) that the cumulative sentences under s. 148 and ss. 332 and 333 were illegal in se far as they exceeded the maximum sentence provided for either of the offences. Held, as regards (1), that, as resistance to the police was one of the component parts of the offence of rioting of which the accused were convicted and sentenced to the maximum punishment provided by s. 148, and having regard to the provisions of s. 71, the additional sentences under s. 152 were illegal. *Held*, further, that s. 152 contemplates an assent or obstruction to some particular public servant; and that, as the charge against the accused as framed was merely to the effect that they assaulted and obstructed members of the solice force in the discharge of their duties, &c., the conviction under that section could not be Held, as regards (2), that separate sentences under s. 152 and ss. 332 and 333 were illegal, as the hurt inflicted on the police-officers was the violence used towards them which constituted the essence of the offence under s. 152. Held, as regards (3), that the separate sentences passed under s. 148 and ss. 332 and 333 were not illegal, there being nothing in s. 71 of the Penal Code which limits the amount of punishment that may be imposed for these offences.—Ferasat v. Queen-Empress, I. L. R., 19 Cal. 105. [Barerley] and Ameer Ali, JJ. Nov. 9, 1891.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

Voluntarily causing grievous hurt to any person being a voluntarily causing grievous hurt to deter public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine:

Any Mag. Uncog. Summons, Ballable. Comp.

884. Whoever voluntarily causes hurt on grave and sudden provocation,

Voluntarily causing hurt on if he neither intends nor knows himself to be likely provocation.

to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

CAUSING hurt on grave and sudden provocation to the person giving the provocation is chargeable as an offence under s. 334, and not under s. 324, of the Penal Code.—Reg. v. Bhala Chula, I Bom. H. C. R. 17. [Sausse, C.J., and Forbes and Tacker, JJ. July 29, 1863.]

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CHAP. XVI. OFFENCES AFFECTING THE HUMAN BODY. [SECS. 335-387.

385. Whoever "voluntarily" causes grievous hurt on grave and sudden Ct. of Ses., provocation, if he neither intends nor knows himself Presy. Mag., or Mag. of 1st Causing grievous hurt on to be likely to cause grievous hurt to any person or and class. provocation. other than the person who gave the provocation, shall be punished with im- Cognizable. prisonment of either description for a term which may extend to four years, Summons. Bailable. or with fine which may extend to two thousand rupees, or with both.

th fine which may extend to two thousand rupees, or with both.

Comp. when
permission is

Explanation. The last two sections are subject to the same provisos

Court before s exception 1, section 300.

which prosecution is pending.

A PRESON. who, by a single blow with a deadly weapon, kills another entering at Mead of night into a dark room where he and his wife were sleeping separately for the purpose of having criminal intercourse with her, held guilty of causing grievous hurt on grave and sudden provocation .- QUEEN v. CHULLUNDEE PORAMANICK, 3 W. R. 55. [Kemp and Seton-Karr, JJ. July 26, 1865.]

THE amount of punishment for cutting off a wife's nose for intriguing with another man depends on the time of the commission of the grievous hurt, whether, at the instant or long after, the husband found himself dishonoured.—QUEEN v. SULAMUT RUS-300A, 4 W. R. 17. [Glover, J. Oct. 24, 1865.]

CAUSING grievous hurt on grave and sudden provocation is punishable under s. 335 of the Penal Code without any intention or knowledge of likelihood of causing such hurt.—Queen v. Umbica Tantines, 4 W. R. 21. [Loch and Glover, J]. Nov. 7, 1865.]

WHERE a prisoner was charged under the Penal Code, ss. 304, 325, and 323, and the jury brought in a verdict of guilty under s. 325, held that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322, with the extenuating bearing facts at circumstances which would confine the punishment within the limits specified in s. 335. -Quakn v. Lukhinarain Agoori, 23 W. R. 61. [Jackson and McDonell, JJ. April 8, 1875-]

Punishment for act endangering life or personal safety of others.

336. Whoever does any act so rashly or negligently as to endanger human Cognizable. life or the personal safety of others shall be pun- Summons, ished with imprisonment of either description for Bailable. a term which may extend to three months, or with Not compfine which may extend to two hundred and fifty rupees, or with both. Re 2507-

BOATMEN, who ply an unseaworthy vessel, whereby the lives of passengers for hire are endangered, should be charged under s. 282, and not under s. 336.—Reg. v. Khoda Jacta, 1 Bom. H. C. R. 137. [Forbes and Couch, JJ. `Jan. 8, 1804.]

887. Whoever causes hurt to any person by doing any act so rashly or Presy. Mag negligently as to endanger human life or the per- or and class. Caming hurt by act endangerieg life or personal safety sonal safety of others shall be punished with im- Cognizable. prisonment of either description for a term which Summons. Bailable. may extend to six months, or with fine which may extend to five hundred Comp. when rupees, or with both.

permission is fven by

as 304A of the Penal Code does not apply to a case in which there has been the vol. Court before untary commission of an offence against the person. If a man intentionally commits which prosean offence, and consequences beyond his immediate purpose result, it is for the cution is Court to determine how far he can be held to have the knowledge that he was likely by pending. such act to cause the actual result; and, if such knowledge can be imputed, the result is not to be attributed to mere rashness. If it cannot be imputed, still the wilful offence does act take the character of rashness, because its consequences have been unfortunate. Acts,

The word quoted has been inserted by Act VIII, of 1882, s. 8.

SECS. 338, 339.] OFFENCES AFFECTING THE HUMAN BODY. [CHAP. XVI.

Probably or possibly involving danger to others, but which in themselves are not offences, may be offences under s. 336, 337, 338, or 304A if done without due care to guard against dangerous consequences. Acts, which are offences in themselves, must be judged with regard to the knowledge, or means of knowledge, of the offender, and placed in their appropriate place in the class of offences of the same character.—EMPRESS v. KETABDI MUNDUL, I. L. R., 4 Cal. 761; 2 C. L. R. 507. [Ainslie and Broughton, J]. Feb. 26, 1879.]

Presy. Mag. or Mag. ot 1st or 2nd class. Cognizable. Summons. Bailable. Comp. when permission is given by Court before which prosecution is pending.

Causing grievous hurt by act endangering life or personal safety of others.

may extend to two years, or with both.

Rable Sgrievous hurt by rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which or with both.

Defendant was convicted under s. 338 of the Penal Code of causing grievous hurt. The evidence showed that the defendant was being driven in a carriage to her house through the streets of the town between the hours of 7 and 8 p. m.; that the carriage was being driven at an ordinary pace and in the middle of the road; that the night was dark and the carriage without lamps, but that the horse-keeper and coachman were shouting out to warn foot-passengers; that the defendant's carriage came into contact with the complainant's father, an old deaf man; and that complainant's father was thereupon knocked down, run over, and killed. Held, upon a reference, that the question for the Court was, whether there was any evidence that the death of the deceased was induced by an act negligently and rashly directed by the accused, and that there was no such evidence. The conviction was accordingly quashed.—Pro., Aug. 17, 1871, 6 Mad. H. C. R., Ap., 31.

S. 304A of the Penal Code does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result; and, if such knowledge can be imputed, the result is not to be attributed to mere rashness. If it cannot be imputed, still the wilful offence does not take the character of rashness, because the consequences have been unfortunate. probably or possibly involving danger to others, but which in themselves are not offences, may be offences under s. 336, 337, 338, or 304A if done without due care to guard against Acts, which are offences in themselves, must be judged dangerous consequences. with regard to the knowledge, or means of knowledge, of the offender, and placed in their appropriate place in the class of offences of the same character.—EMPRESS v. KRTABDI MUNDUL, I. L. R., 4 Cal. 764; 2 C. L. R. 507. [Ainslie and Broughton, J]. Feb. 26 *1870.] See the case of Queen-Empress v. Hurree Mohun Mythee, I. L. R., 18 Cal. 49. [Wilson, J. July, 1890.]

OF WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT.

REPORT OF THE INDIAN LAW COMMISSIONERS ON WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT.

By wrongful restraint we mean the keeping a man out of a place where he wishes to be, and has a right to be. Wrongful confinement, which is a form of wrongful restraint, is the keeping a man within limits out of which he wishes to go, and has a right to go.

right to go.

The offence of wrongful restraint, when it does not amount to wrongful confinement, and when it is not accompanied with violence, or with the causing of bodily hurt, is seldom a serious offence, and we propose, therefore, to visit it with a light punishment.

The offence of wrongful confinement may be also a slight offence. But, when attended by aggravating circumstances, it may be one of the most serious that can be committed.

One aggravating circumstance is the duration of the confinement. Confinement for a quarter of an hour may so retimes be a mere frolic, which would deserve only a nominal punishment, which, indeed, might be so harmless as not to amount to an offence. But wrongful confinement continued during many days will always be a most serious offence. We have attempted to frame the law on this subject in such a manner as to give

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OF WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT-(contd.).

the offender a strong motive for abridging the detention of his prisoner. Another aggravating circumstance is the circumstance that the offender persists in wrongfully confining a person notwithstanding an order issued by a competent authority for the liberation or production of that person. The mode in which these orders are to be issued will be set forth in the Code of Procedure. A third aggravating circumstance is the circumstance that the offender uses criminal confinement for purposes of extortion.

For all these aggravated forms of wrongful confinement, we have provided severe punishment.

We have also provided a separate punishment for a person who, while detaining another in wrongful confinement, omits to supply his prisoner with every thing necessary to health, ease, and comfort. The effect of this provision is that a person, who wrongfully confines another, will be answerable for any bodily hurt which he may cause by wrongfully omitting so to supply his prisoner.

Wrongful restraint.

Wrongful restraint.

Son from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or water, which a person, in good faith, believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

Rulings.

WHERE, a police-officer refused to let a person go home until he had given bail, he was held to have been guilty of wrongful restraint under s. 339 of the Penal Code.—Shee Sarun Sahat v. Mahomed Fazil Khan, 10 W. R. 20. [Loch and Glover, JJ. July 17, 1868.]

MALICE is not an essential ingredient in the offence of "wrongful confinement" as defined by s. 340 of the Penal Code. The offence is complete when a person is wrongfully restrained in such a manner as to be prevented from proceeding beyond certain circumscribing limits. And a person is wrongfully restrained when he is voluntarily obstructed so as to be prevented from proceeding in any direction in which he has a right to proceed. The accused, as abkari-inspector, visited a toddy-shop where the complainant and one Dhanjibhai were employed as agents for the sale of toddy. Having reason to suspect that an offence under the Abkari Act (Bom. Act V. of 1878) had been committed, the accused made an inquiry, in the course of which, the complainant made certain statements implicating his fellow-servant. The accused thereupon resolved to prosecute Dhanjibhai, and make the complainant a witness in the case. In order to prevent him being tutored, the accused ordered his sepoy to bring the complainant to his camp, and there detained him during the night, and, on the following morning, sent him in charge of a sepoy to a Magistrate's Court, where the complainant repeated the statements made by him before the accused. He was then allowed to go away. The accused prosecuted Dhanjibhai, and, in the course of his trial, admitted in his deposition that he had ordered his sepoy to bring the complainant to his camp, and had detained him there during the night, termination of Dhanjibhai's trial, the complainant charged the accused with wrongful. confinement under s. 342 of the Penal Code. The accused pleaded that the complainant had voluntarily come to his tent to have his statements reduced to writing, and that he had, of his own accord, stopped in his camp during the night. The trying Magistrate! held this plea proved, and discharged the accused under s. 253 of the Code of Criminal Procedure (Act X. of 1882). The Sessions Judge held that, though the accused had detained the complainant in his camp during the night, still he was not guilty of any offence under the Penal Code, as he had acted without malice, and to the best of his judgment., 'He, therefore, declined to interfere, or order any further enquiry. High Court on revision, that the trying Magistrate had wrongly omitted to take into

SEC. 340.] OFFENCES AFFECTING THE HUMAN BODY. [CHAP. XVI.

consideration the admissions made by the accused in his deposition in Dhanjibhai's case. Those admissions had an important bearing on the present case. They were admissible in evidence against the accused, and, as they were left out of consideration, the inquiry was necessarily incomplete and imperfect. Further inquiry was, therefore, ordered. The mere circumstance that the accused had acted without malice, and to the best of his judgment, did not protect him, if his act otherwise satisfied the definition of s. 340 of the Penal Code.—Dhania v. F. L. Clifford, I. L. R., 13 Bom. 576. [Birdwood and Jardine, J. Nov. 19, 1888.]

ffe bets 0 + 211 - 2 1. L. P. 2050 Wrongful confinement.

Youngful confinement.

Illustrations.

- (a.) A causes Z to go within a walled space and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.
- (b.) A places men with fire-arms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

Rulings.

The plaintiff, accused of a certain offence for which he was not arrestable without warrant, received a letter from the District Superintendent of Police, directing him to proceed to Russulkonda to present himself before a Magistrate, Two constables were directed to accompany him to prevent him from speaking to any one They, in fact accompanied him to the place. The High Court held that this amounted to wrongful confinement, and awarded Rs. 200 damages with rosts to be paid by the District Superintendent of Police.—Parankusam Narasaya Pantulu-v. Captaix R. A. C. Stuart, 2 Mad. H. C. R. 396. [Holloway and Innes, JJ. May 27, 1865.]

By English law, to constitute the injury of false imprisonment, two points are requisite: (1) the detention of the person, and (2) the unlawfulness of such detention. Every confinement of the person is an imprisonment, whether it be in a common prison, or in a private house, or in the stocks, or even by forcibly detaining one in the public streets. Unlawful or false imprisonment consists in such confinement or detention without sufficient authority; false imprisonment also may arise by executing a lawful warrant or process at an unlawful time, as on a Sunday.—Black. Com., vol. 3, p. 136.

MALICE is not an essential ingredient in the offence of "wrongful confinement" as defined by s. 340 of the Penal Code. The offence is complete when a person is wrongfully restrained in such a manner as to be prevented from proceeding beyond certain circumscribing limits. And a person is wrongfully restrained when he is voluntarily obstructed so as to be prevented from proceeding in any direction in which he has a right to proceed. The accused, as abkari-inspector, visited a toddy-shop where the complainant and one Dhanjibhái were employed as agents for the sale of toddy. Having reason to suspect that an offence under the Abkári Act (Bom. Act V. of 1878) had been committed, the accused made an inquiry, in the course of which the complainant made certain statements implicating his fellow-servant. The accused thereupon resolved to prosecute Dhanjibhái, and make the complainant a witness in the case. In order to prevent him being tutored, the accused ordered his sepoy to bring the complainant to his camp, and there detained him during the night, and, on the following morning, sent him in charge of a sepoy to a Magistrate's Court, where the complainant repeated the statements made by him before the accused. He was then allowed to go away. The accused prosecuted Dhanjibhai, and in the course of his trial, admitted in his deposition that he had ordered his sepoy to bring the complainant to his camp, and had detained him there during the night. After the termination of Dhanjibhái's trial, the complainant charged the accused with wrongful confinement under s. 342 of the Penal Code. The accused pleaded that the complainant had voluntarily come to his tent to have his statements reduced to writing, and that he had, of his own accord, stopped in his camp during the night. The trying Magistrate held this plea proved, and discharged the accused under s. 253 of the Code of Criminal

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Procedure (Act X. of 1882). The Sessions Judge held that, though the accused had detained the complainant in his camp during the night, still he was not guilty of any offence der the Penal Code, as he had acted without malice and to the best of his judgment. He, therefore, destined to interfere, or order any further enquiry. Held, by the High Court ou revision, that the trying Magistrate had wrongly omitted to take into consideration the admissions made by the accused in his deposition in Dhanjibhai's case. Those admissions had an important bearing on the present case. They were admissible in evidence against the accused, and, as they were left out of consideration, the inquiry was necessarily incomplete and imperfect. Further inquiry was, therefore, ordered. The mere circonstance that the accused had acted without malice, and to the best of his judgment, and not protect him, if his act otherwise satisfied the definition of s. 340 of the Penal Code. -DHANIA v. F. L. CLIFFORD, I. L. R., 13 Bom. 376. [Birdwood and Jardine,]]. Nov. 19, 1888.]

841. Whoever wrongfully restrains any person shall be punished with Any Mag simple imprisonment for a term which may extend Summons. Punishment for wrongful restraint. to one month, or with fine which may extend to five Bailable. hundred rupees, or with both.

WHERE the accused prevented the complainants from proceeding in a certain direction with their carts, and exacted from them a sum of money on a false plea, held that the accused were guilty of wrongful restraint, and not of theft.—JOWAHIR SHAH v. GRIDHAREE CHOWDHRY, 10 W. R. 35. [Jackson and Hobhouse, JJ. Sep. 9, 1868.]

WHERE complainant had, for the purpose of removal, placed certain goods upon a cart, and accused came and unyoked the bullocks, and turned the goods off the cart on to the road, and complainant thereupon went away at once, leaving them there, held that, under these circumstances, a conviction under s. 341 of the Penal Code could not be sustained; but that there was such "mischief" as to bring the offence within s. 425. Held. also that s. 425 does not necessarily contemplate damage of a destructive character. It requires merely that there should be an invasion of right, and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it.—In the MATTER OF JUGGESWAR DASS 7. KOYLASH CHUNDER CHATTERJEE, I. L. R., 12 Cal. 55. [Garth, C.]., and Prinsep, Wilson, Field, and O'Kinealy, JJ. Sep. 4, 1885.]

Where an accused person alleges that an offence with which he is charged has been compounded so as to take away the jurisdiction of the Criminal Courts to try it, the onus is on him to show that there was a composition valid in law. M, a European British subject, charged with the compoundable offences of wrongful restraint and wrongful confinement of coolies employed on a tea garden of which he was the manager, pleaded that the Magistrate had no jurisdiction to try the cases, as they had been compounded by the com-The alleged compromise consisted in a Bengali paper, signed by the coolies, stating that they "made rasinama" (compromise) "of the case of their own accord," and a paper in English signed by M, these papers being given to the District Superintement of Police, who had investigated the complaints, and who stated that he asked the coolers as to the contents of the Bengali paper, and they said that they had signed it voluntarily, and stated its purport; and that one of them said in the presence of the others that it was a rasinama. G, one of the coolies, also wrote on the paper the words in Uriya I will not carry on the case." The Bengali paper was written by the darogah of the police-station in presence of M. The paper signed by M was as follows: "I hereby agree with these Ganjam people that there shall be no legal proceedings of any kind taken against them with the exception of those who have not completed their agreements. Those whose agreements have not been completed, proceedings will be taken against them on 22ad May, if they have not returned to the garden before then." Neither of the papers were explained to G, so as to make them intelligible to him; for, though the Bengali paper was read out, G did not understand that language. G was one of the coolies who had countied his agreement with M. Held per Prinsep, J.: The compounding of an offence signifies that the person against whom the offence has been committed has received some gratification to act as an inducement for his desiring to abstain from a prosecution; here these was no forbearance on the part of M to proceed against G, who had served out the turns of his engagement, and, therefore, there was no consideration for the agreement to cellspound. Having regard, moreover, to the ignorance and inferior intelligence of G, it

was of vital importance for M to show what led to the alleged agreement, and how it was that the darogah was instrumental to it, which he had not done. Per Trevelyan, J.: Compounding an offence supposes an arrangement by which the parties have settled their differences, and in the more usual acceptation of the term, implies that the prosecutor has received some consideration or gratification for drepping the prosecution. Although the provisions of the Contract Act may not apply, the proof of the arrange must be similar to that which the Court requires for the proof of any agreement which is in issue; and, unless it appears that the parties were free from influence of every kind, and were fully aware of their respective rights, it would be impossible to give effect to a so-called arrangement or composition. Having regard to the fact that the writer of the Bengali agreement had not been called, and that the contracting parties were, on the contracting parties were, on the contracting parties were. side, ignorant coolies, strangers to the land, and to the language in which the docu was written, and on the other, a European of some education, assisted by his Bengali clerk, and having also the assistance of the police, it was not proved that G knew what he was about and was fairly contracting. Held therefore, by the Court that there was, under the circumstances, no compounding of the offences with which M was charged valid in law such as to deprive the Magistrate of jurisdiction to try them .- MURRAY v. THE QUEEN-EMPRESS, I. L. R., 21 Cal. 103. [Prinsep and Trevelyan, J]. June 28, 1893.]

Presy. Mag. or Mag. 1st or 2nd class. Cognizable. Summons. Bailable. Comp. **342.** Whoever wrongfully confines any person shall be punished with Punishment for wrongful imprisonment of either description for a term which confinement.

may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Held by the majority of the Court (Kemp, J., dissenting) that the prisoners were rightly convicted of wrongful confinement of a woman, the facts of the case showing that she never went willingly to the house of the prisoners, and was not a willing innuite while she was there.—Queen v. Ameer Daraz, 4 W. R. 3 • [Kenp and Seton-Kaux, J. Sep. 7, 1865.]

THE time during which a party is kept in wrongful confinement is immalerial, except with reference to the extent of punishment. In no case is a police-officer instifled by s. 152, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 61, new Code of Criminal Procedure (Act X. of 1882), in detaining a person for a single hour, except upon some reasonable ground justified by all the circumstances of the case—Quarter v. Suprosunno Ghosaul, 6 W. R. 88. [Kemp and Markby, J]. Dec. 10, 1886.]

The High Court declined to interfere with an order of a Deputy Magistrate descharging an accused without trial in a case under s. 342 of the Penal Code, because the complainant and his witnesses were not present.—Santoo Mundle v. Abdoo: Biswas, 13 W. R, 35; 7 B. L. R. 8n. [Loch and Hobhouse, J]. Mar. 2, 1870.]

FOUR persons, two of them police constables and two village-officers, were convicted of wrongful confinement and abetment thereof. The defendants, the village-officers, maliciously directed the arrest of certain persons for resisting the detention of certain pigs found trespassing. Held a good conviction.—Pro., June 13, 1873, 5 Mad. H. C. R., Ap., 24.

In a case of a police-officer charged under s. 342 of the Penal Code, where there was no malice, no intention of doing an act of the nature spoken of in s. 339 or 340, and no voluntary obstruction or restraint, though there was probably excessive and mistaken exercise of powers not civilly excusable in a police-officer, the facts were held not to appount to the criminal offence of wrongful restraint.—In the Matter of Budroot Hossey, 24 W. R. 51. [Jackson and McDonell, JJ. Sep. 1, 1875.]

S. 54 of the Criminal Procedure Code (Act X. of 1882) authorizes the arrest by the police, not only of persons against whom a reasonable complaint has been made er a reasonable suspicion exists of their having been concerned in a "cognizable offence," and also of persons against whom "credible information" to that effect has been received. Smaller—Where the arrest is legal, there can be no guilty knowledge "superadded to an inequality," such as it is necessary to establish against the accused to justify a conviction was seen as 220 of the Penal Code. It is only where there has been an excess, by a police-officer, of his legal powers of arrest, that it becomes necessary to consider whether he has actionately or maliciously, and with the knowledge that he was acting contrary to law.—Queen-Empress v. Amarsang Jetha, I. L. R., 10 Bom. 506. [Birdwood and Japane, I]. Dec. 7, 1885.]

CHAP. XVI.] OFFENCES AFFECTING THE HUMAN BODY. [SRCS. 343, 344.

On the 29th December 1887, the accused, a police constable, was on duty at a temporary post near the Arthur Crawford Market. His turn of duty lasted from 4 to 7 A.M. Between 6 30 and 7 A.B., he saw the complainant carrying under his arm three pieces of cloth. Suspecting that the cloth was stolen property, he went up to the complainant, and questioned him. In answer to one of the questions, the complainant stated that the cloth was made in England. The accused, noticing that each piece bore Gujarathi marks, and, not knowing that such marks are placed on English-made goods, concluded that this statement was false, and that the cloth had been stolen. He took hold of one of the pieces of cloth in order to examine it more closely. The complainant objected to this, and there was a scuffle between them-for the possession of the cloth. The accused then arrested the complainant, and took him to a European inspector, to whom he stated the facts, alleging that he had arrested the complainant, because he had assaulted him. The inspector, seeing that the complainant was an old man, and, on the accused saying he was not hurt, let the complainant go. The complainant then lodged a complaint before the Acting Chief Presidency Magistrate, charging the accused with wrongful restraint and wrongful confinement, of tences punishable under ss. 341 and 342, respectively, of the Penal Code (Act XLV. of 1860). The defence was that the complainant had assaulted the accused, and had been, on that account, arrested and kept in confinement until released by the inspector of police. The Magistrate found that there was no justification for the suspicion which the accused professed to entertain: that there were no reasonable grounds for questioning the complainant about the cloth in his possession; and that the scuffle was caused solely by the action of the accused in treating the complainant, without any valid reason, as a suspected thief. The Magistrate convicted the accused of wrongful confinement under s. 342 of the Penal Code (Act XLV. of 1860), and sentenced him to four months' rigorous imprisonment. Held, by the High Court, that the conviction was wrong. The accused having, under the circumstances of the case, an honest suspicion that the cloth in the possession of the complainant was stolen property, was justified in putting questions to the complainant the answers to which might clear away his suspicions, and, having received answers which were not, in his opinion, satisfactory, he acted under a bond-fide belief that he was legally justified in detaining what he suspected to be stolen property. The putting of questions to the complainant, not for the purpose of causing annoyance or from idle curiosity, but in order to clear an his suspicions, was an indication of good faith, as defined in s. 52 of the Penal Code (Act XLV. of 1860). He was, therefore, protected by s. 79 of the Code. Even though the act of the accused in detaining the cloth might not have been strictly justifiable by law-that is, even though there might not have been a complete basis of fact to justify a reasonable suspicion that the cloth was stolen property—still the complainant had no right of private defence under s. 99 of the Code, as the accused was a public servant acting in good faith under colour of his office, and his act was not one which caused the apprehension of death or of grievous hurt. The complainant was not justified in refusing to allow the accused to inspect the cloth, in snatching it from his hands, and in scuffling with him. He was, therefore, legally arrested, under s. 54, cl. 5, of the Criminal Procedure Code (Act X. of 1882), for obstructing a police officer while acting in the execution of his duty. Held, also, that the High Court will exercise its powers under ss. 435 and 439 in the interests of justice in exceptional cases, as where the enquiry in the lower Court has been faulty.—BHAWOO JIVAJI v. MULJI DAYAL, I. L. R., 12 Bom. 377. [Birdwood and Parsons, JJ. Mar. 22, 1888.]

343. Whoever wrongfully confines any person for three days or more Presy. Mag shall be punished with imprisonment of either de- or Mag. of 1st or 2nd class. Wrongfu? confinement for scription for a term which may extend to two years, Cognizable. three or more days. or with fine, or with both.

Bailable.

THE prisoners having been sentenced for abetment of abduction of a woman under Not comp. ss. 109 and 498 of the Penal Code, and for wrongful confinement of her under s. 343, held that both sentunces could not stand, and that, as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone.—QUEEN v. ISHWAR CHUNDER JOGI, W. R., Sp., 21. [Loch and Seton-Karr, JJ. April 12, 1864.]

844. Whoever wrongfully confines any person for ten days or more shall Ct. of Ses, Wrongful confinement for - be punished with imprisonment of other descrip- or Mag., ten or more days. tion for a term which may extend to three years, and or and class. shall also be liable to fine.

Cognizable. Summons. Bailable. Not comp.

SECS. 345-347.] OFFENCES AFFECTING THE HUMAN BODY. [CHAP. XVI.

Fine alone is not a legal sentence for a prisoner convicted under s. 344 of the Pena Code.—Reg. v. Bahirjee bin Krishnaji, 1 Bom. H. C. R. 39. [Newton and Tucker, J]. Aug. 12, 1863.]

THE accused induced the complainants, who, he alleged, were indebted to him is various sums of money, to consent to live on his premises, and to work off their delts. The complainants were to, and did in fact, receive no pay, but were fed by the access as his servants. He insisted on their working for him, and punished them by besting them if they did not do so. The complainants in addition alleged that they were prevent ed leaving the accused's premises, and that they were locked up at night. On these also gations the accused was convicted by the first Court of offences under ss. 344, 370, a 374 of the Penal Code. On appeal the convictions under the two former sections quashed, the evidence as to detention being disbelieved; but that under s: 374 was upl on the ground that, by magnifying the complainants' debts to him, and never settling their accounts, the accused had unlawfully compelled them to go on working for him against their will. On a rule to show cause why the conviction should not be quashed held (by Petheram, C.J., and Beverley, J.) that the conviction was erroneous, and mess be set aside. Petheram, C.J.—A person who insists that another, who has consented to serve him, shall perform his work, does not unlawfully compel such person to labor against his will within the meaning of s. 374 of the Penal Code, because it is a thing which such person has agreed to do; but if he assaults such person for not working to his satisfaction, he commits an offence punishable under s. 352. Held by Norris, J.—That upon the facts of the case the complainants never gave their full and free consent to work and labour for the accused, and that the accused therefore did unlawfully compel them to labour against their will, and that the conviction under s. 374 was right — MADAN MOHAN BISWAS v. QUEEN-EMPRESS, I. I. R., 19 Cal. 572. [Petheram, C.J., and Norris and Beverley,]]. April 2d, 1892.]

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

Ct. of Ses.,
Presy. Mag.,
or Mag. of 1 st secret.
or 2nd class.
Cognizable.
Summons.
Bailable.
Not comp.

Wrongful confinement of person for whose liberation a writ has been issued.

Wrongful confinement of person for whose liberation a writ has been issued.

Wrongful confinement of that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment to two years, in addition to any term of imprisonment to which he may be list ble under any other section of this Code.

846. Whoever wrongfully confines any person in such manner as to in

Wrongful confinement in dicate an intention that the confinement of such per
secret. son may not be known to any person interested in
the person so confined, or to any public servant, or that the place of such con
finement may not be known to, or discovered by, any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of eithe
description for a term which may extend to two years, in addition to any othe
punishment to which he may be liable for such wrongful confinement.

In order to render a person liable under s. 346 of the Penal Code, it must be show that the wrongful confinement was of such a nature as to indicate an intention that the person confined should not be discovered.—In the Matter of Sreenath Banksiges, L. R., 9 Cal. 221. [McDonell and O'Kinealy, JJ. Aug. 7, 1882]

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Wrongfut confinement for the purpose of extention the purpose of extention in the person confined, any property of constraining to an extention of constraining the person confined and property of constraining to an extention of constraining the person confined and property of constraining to an extention of constraining the person confined and property of constraining to an extention of constraining the person confined and property of constraining to an extention of constraining to a c

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fined, or any person interested in such person, to deanything illegal, or to give any information which may facilitate the control sion of an offence, shall be punished with imprisonment of either description of a term which may extend to three years, and shall also be liable to the

In this section the word "offence" denotes a thing punishable under this cole, under any special or local law as defined in this Code.—S. 40, Penal Code.

CHAP. XVI.] OFFENCES AFFECTING THE HUMAN BODY. [Secs. 348-350.

Wrongful confinement for the purpose of extorting con-fession, or of compelling restoration of property.

248. Whoever wrongfully confines any person for the purpose of ex-Ct. of Ses., torting from the person confined, or any person in-Presy. Mag. terested in the person confined, any confession or Mag. of 1st any information which may lead to the detection of Cognizable. an offence or misconduct, or for the purpose of con-Summons. Bailable.

straining the person confined, or any person interested in the person confined, Not comp. to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisomment of either description for a term which may extend to three years, and shall also be liable to fine.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code. -S. 40, Penal Code.

WHERE a constable and others enter a house and apprehend certain persons as gamblers, and asserwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others.—Govt. v. MAHOMED Hossein, 5 W. R. 49. [Norman and Campbell, JJ, Mar. 5, 1866.]

OF CRIMINAL FORCE AND ASSAULT.

849. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or is Force. he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion, in one of the three ways hereinafter described:—

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion, or change, or cessation of motion, takes place without any further act on his part; or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

850. Whoever intentionally uses force to any person, without that perminal force.

son's consent, in order the committing of any Criminal force. offence, or intending by the use of such force to cause, or knowing it to be likely that, by the use of such force he will cause, interview r annoyance to the person to whom the force is used, is said to ned criminal force to that other.

Illustrations.

(a.) Z is sitting in a moored boat in a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any. offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

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SEC. 351.] OFFENCES AFFECTING THE HUMAN BODY. [C HAP. XVI.

- (b.) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injecte, frighten, or annoy Z, A has used criminal force to Z.
- (c.) Z is riding in a palanquin. A, intending to rob Z, seizes the pole, and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z, and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.
- (d.) A intentionally pushes against Z in the street. Here A has, by his own bedity power, moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.
- (e.) A throws a stone intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes, or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten, or annoy Z, he has used criminal force to Z.
- (£) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.
- (g.) Z is bathing A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.
- (h.) A incites a dog to spring upon Z without Z's consent. Here, if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

Ruling.

The following cases of assault under the English law amount to the use of criminal force under the Penal Code: "A master taking indecent liberties with a female scholar, without her consent, though she does not resist (Reg. v. Day, 9 C. and P. 722); a medical man unnecessarily stripping a female patient naked, under the pretence that he cannot otherwise judge of her illness, if he himself take off her clothes (Reg. v. Rosinski. 1 Mood. C. C. 12); parish-officers cutting off the hair of a pauper in the poorhouse by force and against her will (Forde v. Skinner, 4 C. and P. 239); taking a new-born child from the mother, under pretence of taking it to an institution to be nursed, and, instead, putting it into a bag, and hanging it on some palings by the wayside (Reg. v. March, 1 C. and K. 496); spitting in a man's face (6 Mod. 149); striking a horse upon which a man is riding, and thus causing him to be thrown (1 Mod. 24; W. Jones 444); and every touching or laying hold (however trifling) of another's person or clothes in an angry, revengeful, rude, insolent, or hostile manner (1 Hawk., c. 62, s. 2; see also Rawlins v. Till, 3 M. and W. 28; Coward v. Buddeley, 4 H. and N. 478). All cases of trifling assault will be met by s. 95. Penal Code.—Starling's Indian Criminal Law and Procedure, 3rd ed., p. 298.

351. Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he

who makes that gesture or preparation is about to the criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meeting as may make those gestures or preparations amount to an assault.

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Illustrations.

- (a.) A shakes his fist at Z, intending or knowing it to be likely that he may thereby sause Z to believe that A is about to strike Z. A has committed an assault.
- (b.) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack

Z. A has committed an assault upon Z. (c.) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture un-

accompanied by any other circumstances might not amount to an assault, the gesture explained by the words may amount to an assault. On A + Z are on office bank of a

352. Whoever assaults or uses criminal force to any person otherwise than Any Mag. on grave and sudden provocation given by that per- Uncog. Punishment for using crimison shall be punished with imprisonment of either Summons. nal force otherwise than on grave provocation. description for a term which may extend to three Comp. months, or with fine which may extend to five hundred rupees, or with both.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought, or voluntarily provoked by the offender as an excuse for the offence—or

If the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant—

If the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact.

Any gestures calculated to excite in the party threatened a reasonable apprehension that the party threatening intends immediately to offer violence, or, in the language of the Penal Code, is "about to use criminal force," to the person threatened, constitute, if coupled with a present ability to carry such intent into execution, an assault in law. Mere words do not amount to an assault, but the words which the party threatening uses at the

time may either give his gestures such a meaning as may make them amount to an assault, or, on the other hand, may prevent them from being held to amount to an assault. In order to have this latter effect, the words must be such as clearly to show the party threatened that the party threatening has no present intention to use immediate criminal force—CAMA (A. C.) v. MORGAN (H. F.), T. Bom. H. C. R. 205. [Arnould, Acting C. J., and Newton and Tucker, JJ. Sep. 28, 1864.]

A CHARGE of assault and theft should not be dismissed for default of complainant's at- 🔀 tendance.—Queen v. Jodoo Paharee, 1 W. R. 25. [Kemp and Glover, J]. Nov. 18, 1864.]

WHERE, of several persons constituting an unlawful assembly, some only are armed with sticks, and A, one of them, is not so armed, but picks up a stick, and uses it, B (the master of A), who gave a general order to beat, is guilty of abetting the assault made by A.-Queen v. Rasookoollah, 12 W. R. 51. [Glover and Mitter, J]. Sep. 2, 1869.]

A PERSON tried and acquitted on a charge of using criminal force under s. 252 (which be includes the offence of battery) cannot be tried in respect of the same criminal matter on a charge of hurt.—KAPTAN v. SMITH (G.M.), 16 W. R. 3; 7 B. L. R., Ap., 25. and Paul, JJ. June 7, 1871.]

in a case of assault, a sentence inflicting a fine of Rs. 50, and awarding imprisonment for one month in default of payment of the fine, is illegal, with reference to ss. 65 and 352 of the Penal Code.—IN THE MATTER OF JEHAN BUKSH, 16 W. R. 42. [Kemp and Ainslie, JJ. Sep. 2, 1871.]

THE rules or executive orders of Government printed at pages 26 and 27 of Mr. Nairne's . Revenue Handbook have not the force of law, and a public servant, acting in obedience thereto, cannot be considered as acting in execution of his duty as a public servant, if his

the force bring but short before the blow actual.

Sec. 353.] OFFENCES AFFECTING THE IIUMAN BODY. [CHAP. XVI.

act is otherwise illegal. Accordingly, where, on a complaint by a sepoy in the Revenue Department deputed by a forest settlement-officer to impress some carts for the use of the latter, that the accused assaulted and prevented him from seizing fits cart, a Magistate of the first class convicted the accused under s. 353 of the Penal Code for assaulting and obstructing a public servant in the execution of his duty, and sentenced the accused undergo twenty-one days' rigorous imprisonment, held that the conviction under s. 33 of the Penal Code should be set aside. The only offence of which, upon the evidence, the accused was guilty, was that of simple assault under s. 352 of the Penal Code.—Is re RAKHMAJI, I. L. R., 9 Bom. 558. [Nanabhai Haridas and Wedderburn, J]. July 6, 1885.]

BLACKSTONE thus defines assault under the English law: "It is an attempt or offer to beat another without touching him, as if one lifts up his cane, or his fist, in a distancing manner at another, or strikes at him, but misses him: this is an assault insults, which Finch describes to be an unlawful setting upon one's person; and though no structure suffering is proved, yet the party injured may have redress by action for damages as a compensation for the injury."—BLACK. COM., VOL. 3, P. 127.

An accused person was convicted under s. 457 of the Penal Code of house-breaking by night in order to commit an offence (mischief and assault), and also under ss. 455 and 352 for the offences of mischief and assault, and punished separately for each tolkies. These offences formed parts of one transaction. Held that the sentences were legit.—Queen-Empress v. Nirichan, I. L. R., 12 Mad. 36. [Kernan and Muttusami Ayyr, J]. April 17, 1888.]

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

Using criminal force to deter a public servant from discharge of his duty.

"charge of his duty.

"in consequence of anything done, or attempted to be done, by such person in the lawful discharge of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

WHERE substantially only one offence has been committed, the several acts which taken together, constitute that offence, cannot legally be treated as separate offences, and the prisoner cannot legally be sentenced in respect of these as well as in respect of the principal offence.—Queen v. Chunder Kant Lahoree, 12 W. R. 2; 3 B. L. R., A. Cr., 14.* [Macpherson and Jackson, J]. June 11, 1869.]

A COLLECTORATE peada, who had been deputed to keep the peace during a distraint was assaulted by the prisoners while on his road to execute the order with which he had been entrusted, the prisoners attempting to deprive him of his parwana. Held that they were rightly convicted under s. 353 of assaulting a public servant while in the execution of his duty.—QUEEN v. METHI MULLAH, 13 W. R. 49. [Kemp and Jackson, JJ. Max. 36. 1870.]

The rules or executive orders of Government printed at pages 26 and 27 of Mr. Naine's Revenue Handbook have not the force of law, and a public servant, acting in obedience there to, cannot be considered as acting in execution of his duty as a public servant, if his act is otherwise illegal. Accordingly, where, on a complaint by a sepoy in the Revenue Department, depited by a forest settlement-officerato impress some carts for the use of the latter, that the accused assaulted and prevented him from seizing his cart, a Magistrate of the latter, that the accused assaulted and prevented him from seizing his cart, a Magistrate of the latter, that the accused assaulted and prevented him from seizing his cart, a Magistrate of the latter class convicted the accused under s. 353 of the Penal Code for assaulting and obstructing a public servant in the execution of his duty, and sentenced the accused to undergo trenty-one days' rigorous imprisonment, held that the conviction under s. 353 of the Penal Code should be set aside. The only offence of which, upon the evidence, the accused was guilty, was that of simple assault under s. 352 of the Penal Code.—In re RAKHMAJI, Like R., 9 Bom. 558. [Nanabhai Haridas and Wedderburn, J]. July 6, 1885.]

^{*} In the B. L. R. the name of the case is " Queen v. Kalisankar Sandyal and other."

CHAP. XVI.] OFFENCES AFFECTING THE HUMAN BODY. [Secs. 354, 355.

Four persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment debtor by a Civil Court peon who went with a warrant for his arrest accompanied by other persons, A and B, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon and another by means of a dangerous weapon on A. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code. and sentenced them to six months' rigottus imprisonment under the former section, and two months' rigorous imprisonment ander the latter. He further convicted one of the accused of an offence under s. 324 in respect of the assault on A, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the explry of the other. Held that the offence of rioting was completed by the assault on A, and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure. Held, further, that, even if A had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were legal, inasmuch as the acts of the accused, taken separately, constituted offences under ss. 143 and 353 of the Penal Code, and, combined, an offence under s. 147; and under s. 235, sub-s. 3, of the Code of Criminal Procedure, the accused might be charged with, and tried at, one trial for the offence under s. 147, and those under ss. 143 and 353, and, therefore, also apparately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code, as amended by s. 4 of Act VIII. of 1882, which limit had not been exceeded in the present case.—In the Matter of Chan-DRA KANT BHATTACHARJEE: CHANDRA KANT BHATTACHARJEE v. QUEEN-EMPRESS, I. L. R., 12 Cal. 495. [Mitter and Beverley, J]. Dec. 11, 1885.]

A WARRANT issued for the arrest of a debtor under the provisions of s. 251 of the Civil Procedure Code was initialled by the Munsarim of the Court, sealed with the seal of the Court, and delivered to the proper officer for execution. The debtor forcibly resisted the officer, and was tried and convicted, under s. 353 of the Penal Code, of assaulting a public servant in the execution of his duty as such. In revision, it was contended, with reference to the requirements of s. 251 of the Civil Procedure Code, that the warrant of arrest, having been initialled only, was bad, and the officer could not legally execute it, and consequently no offence under s. 353 of the Penal Code had been committed. Held that this contention could not be allowed, and, although it was proper that the person signing a warrant should write his name in full, it could not be said that, because the signature was confined to the initials of the name, it was not the duty of the officer to execute the warrant. Held also, with reference to s. 99 of the Penal Code, that the act of the accused did not cease to be an offence on the ground that it was done in the exercise of the right of private defence.—Queen-Empress v. Janki Prasad, I. L. R., 8 All. 293. [Oldfield, [. May 4, 1886.]

854. Whoever assaults or uses criminal force to any woman, intending to Presy. Mag. outrage, or knowing it to be likely that he will there- or Mag. of 1st Assault or use of criminal by outrage, her modesty, shall be punished with im- or 2nd class.

prisonment of either description for a term which Cognizable. force to woman with intent to outrage her modesty. prisonment of either description for a term which Warrant.

Bailable. Not comp.

Ax indecent assault upon a woman does not amount to an attempt to commit rape unless the Court is satisfied that there was a determination in the accused to gratify his Bisions at all events, and in spite of all resistance.—Empress v. Shankar, I. L. R., 5

may extend to two years, or with fine, or with both.

n. 403. [Melvill and Nanabhai Haridas, JJ. Mar. 2, 1881.]

Assault or criminal force with intent to dishonour person otherwise than on grave

255. Whoever assaults or uses criminal force to any person, intending Presy. Mag. thereby to dishonour that person, otherwise than on or Mag. of 1st grave and sudden provocation given by that person, or and class. shall be punished with imprisonment of either de Uncog. shall be punished with imprisonment of either de- Summons. scription for a term which may extend to two years, Bailable, or with fine, or with both.

SECS. 356-358.] OFFENCES AFFECTING THE HUMAN BODY. [CHAP. XVI.

Any Mag lognizable. Wargant. Not bailable. Not comp.

856. Whoever assaults or uses criminal force to any person in attempting to commit theft on any property which that there Assault or criminal force in son is then wearing or carrying, shall be punished attempt to commit theft of property carried by a person. with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Warrant. Bailable. Not comp.

Any Mag.
Cognizable, 340 Assemble or criminal force to any person, in attempting wrongfully to a second or criminal force to any person, in attempting wrongfully to a second or criminal force to any person, in attempting wrongfully to a second or criminal force to any person, in attempting wrongfully to a second or criminal force to any person, in attempting wrongfully to a second or criminal force to any person, in attempting wrongfully to a second or criminal force to any person, in attempting wrongfully to a second or criminal force to any person, in attempting wrongfully to a second or criminal force to any person or criminal Assault or criminal force in ished with imprisonment of either description for a attempt wrongfully to confine person. term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Any Mag. Uncog. Summons. Bailable. Comp.

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person a Assaulting or using crimibe punished with simple imprisonment for a nal force on grave provocawhich may extend to one month, or with fine which

may extend to two hundred rupees, or with both. Explanation.—The last section is subject to the same explanation as section 352.

> THE prisoner, a fully-developed adult man, was charged with causing the death of his wife, a girl aged about 11 years and 3 months, who had not attained puberty. death was caused by hæmorrhage from a rupture of the vagina caused by the having sexual intercourse with the girl. For the defence it was alleged that he sexual intercourse with the girl on several previous occasions without injury to there were circumstances in the case which showed that this was possible, and preimptobable, though the medical evidence was to the effect that, if such intercol previously taken place, the penetration was probably not so complete or with a sexual vigour as on the occasion when the injury was caused. The medical evidence of the medical evidence or with a sexual vigour as on the occasion when the injury was caused. further to the effect that the girl had not attained puberty, and was immature and unfit for sexual intercourse; that, under such circumstances, sexual intercourse h the prisoner and the girl was likely to be dangerous to her, and to cause injuries less serious according to the degree of penetration effected. The prisoner was el with (a) culpable homicide not amounting to murder under s. 304 of the Penal Code; causing death by doing a rash and negligent act under s. 304A; (c) voluntarily grievous hurt under s. 325; and (d) causing grievous hurt by doing an act so negligently as to endanger human life or the personal safety of others under s. 338. that, in such a case, when the girl is a wife and above the age of 10 years, and when there fore the law of rape does not apply, it by no means follows that the law regards the wife as a thing made over to be the absolute property of her husband, or as a person detaile the protection of the criminal law; that no hard and fast rule can be laid down that sexual intercourse with a girl under a certain age must be regarded as dangerous and putting or over that age as safe and right, but that each case must be judged according to be are individual circumstances; that, in such a case, the jury have to consider and say winder the particular circumstances of the case, having regard to the physical conditi the girl, and to the intention, the knowledge, the degree of rashness or negligence with which the accused is shown to have acted on the occasion in question, he has beought himself within any of the provisions of the criminal law. Held further that, if the were of opinion (a) that the act of the prisoner caused the death of the girl, that is to any. that the act of cohabitation on the part of the prisoner had the effect of rupturing the vagina, and so causing the hæmorrhage which led to her death; (b) that the act of bitation between a fully-developed man like the prisoner and an immature girl I wife was itself a thing likely to lead to dangerous consequences; (c) that that act w of such a character as to indicate a reckless indifference to the welfare of the girl or a want of reasonable consideration about what the prisoner was doing, one which also best band of the girl, if he had had a reasonable regard to her welfare, and had exercise seesonable thought as to the act he contemplated doing and had exercise seesonable thought as to the act he contemplated doing and had exercise seesonable thought as to the act he contemplated doing and had exercise seesonable thought as to the act he contemplated doing and had exercise seesonable thought as to the act he contemplated doing and had exercise seesonable thought as the contemplated doing and had exercise seesonable thought as the contemplated doing and the seesonable thought as the contemplated doing and the seesonable thought as the contemplated doing and the seesonable thought as the se sonable thought as to the act he contemplated doing, would have abstained from the they would be justified in finding that the prisoner caused the death of the girl by and negligent act. Under no system of law with which Courts have to do in this cour

CHAP. XVI.] KIDNAPPING, ABDUCTION, SLAVERY, &c. [SECS. 359-361.

try, whether Hindu or Mahomedan, or that framed under British rule, has it ever been the law that a husband has the absolute right to enjoy the person of his wife without regard to the question of safety to her.—QUEEN EMPRESS v. HURREE MOHUM MYTHEE, L. L. R., 18 Cal. 49. [Wilson, J. July, 1890.] This was bottle Passing of the Consent of

OF KIDNAPPING, ABDUCTION, SLAVERY, AND FORCED LABOUR.

Kidnapping.

859. Kidnapping is of two kinds: kidnapping from British India, and kidnapping from lawful guardianship.

This offence may be committed on a child by removing that child out of the keeping of its lawful guardian or guardians. On a grown man it can only be committed beyond the limits of the Queen's territories, or by receiving him on board a ship for that purpose. The enticing a grown-up person by false promises to go from one place in the Queen's territories to another place, also within those territories, may be a subject for civil action, and under certain circumstances for a criminal prosecution, but it does not come under the nead of kidnapping.—INDIAN LAW COMMISSIONERS' REPORT.

Kidnapping from British India

Kidnapping from British India

Kidnapping from British India.

Kidnapping from British India.

Without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

Ridnapping from clawful a male, or under sixteen years of age if a female, or under sixteen years of age if a f

Explanation.—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who, in good faith, believes himself to be the father of an illegitimate child, or who, in good faith, believes himself to be entitled to the lawful custody of such child, which such act is committed for an immoral or unlawful purpose.

A CHARGE of kidnapping from lawful guardianship should contain the name of the guardian.—Extract (para. 6) of letter No. 149 from Registrar, High Court, dated Feb. 16, 1866; I Wyman's Rev., Civ., and Crim. Reporter 16.

THE consent of a girl under 16 years, kidnapped or abducted to compel her marriage, does not affect the offence; nor is it necessary that the taking or enticing should be shown to be by means of force or Traud.—QUEEN v. AMGAD BUGBAH, 2 W. R. 61. [Glover,]. April 18, 1805.]

The abduction of a minor girl under 16 years of age out of the custody of her lawful guardian is punishable under s. 361 of the Penal Code. It is not necessary to such a conviction that the abduction was forcible.—Queen v. Modhoo Paul, 3 W. R. 9. [Glover, J. May 9, 1865.]

THE consent of a kidnapped person is immaterial; and it is not necessary for a conviction indeer # 301, Penal Code, that the taking or enticing should be shown to have been by means of force or fraud.—QUEEN v. BHUNGER AHUR, 2 W. R. S. [Glover, J. June 5, 1865.]

A PERSON, in carrying off, without the consent of her lawful guardian, a girl to whom be was betrothed by his father, who, after permitting her to reside occasionally in his house, suddenly changed his mind, and broke off the marriage, is guilty of kidnapping from lawfal guardianship punishable under s. 363 of the Penal Code.—QUERN v. GOOROODOSS RAJEURSER, 4 W. R. 7; 5 Rev., Jud., and Police Journal 149. [Kemp and Seton-Karr, JJ. Sep. 11, 1865.]

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In the case of a runaway, entitled after a voluntary abandonment of her home to emigrate, a charge of kidnapping from lawful guardianship cannot be sustained.—QUERN v. GOUDHUR SINGH, 5 Rev., Jud., and Police Journal 151. [Kemp, Seton-Karr, and Glover, J.]. Sep. 12, 1865]

To bring a case under s. 361 of the Penal Code, there must be a taking or enticing of a child out of the keeping of the lawful guardian without his consent.—QUEEN. GUNDER SINGH, 4 W. R. 6. [Kemp and Glover, JJ. Sep. 12, 1865.]

UNDER s. 361 of the Penal Code (kidnapping from lawful guardianship), the consent of a minor is immaterial, nor do force and fraud form elements of the offence.—QUEEN SOOKEE, 7 W. R. 36. [Glover, J. Feb. 25, 1867.]

To support a conviction for kidnapping under ss. 361 and 363 of the Penal Code, it must be shown that the accused took or entired away from lawful guardianship the person kidnapped.—Queen v. Neela Bebee, 10 W. R. 33. [Loch and Glover, J]. Sep. 3, 1868.]

IF, knowing a girl has been kidnapped, a person wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Penal Code. Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose his labour against his will, unless that right is conferred by law, as in the case of a parent or guardian, or a jailor.—QUERN v. MIRZA SIKUNDUR BUKHUT, 3N.-W.P.146. [Turner and Turnbull, J]. June 20, 1871.]

D S had two wives, N and J, by the latter of whom he had two daughters. In February 1876, he went with his wife N, to a marriage in another village, leaving J and her two daughters at home. During the temporary absence of D S, J removed her two daughters to the house of her brother-in-law, M, and married the elder girl (aged 8 years) to one G, with the assistance of three other persons. The Chief Court held (1) that the word woman "in s. 366 included a minor female; (2) that there was a kidnapping from the lawful ghardianship of D S within the meaning of ss. 361 and 366, notwithstanking the consent of the mother J, to the girl's removal. Per Smyth, J.—Because the girl, during the temporary absence of the father D S, continued in his possession and under his control as her lawful guardian, and was not under the guardianship of her mother J. Per Plowden, J.—Because the consent of a mere custodian in breach of the trust reposed by the person trom whom the right to custody is derived is not the consent of the guardian in whose keeping the minor still continues through the custodian.—Dhera Singh v. Mussammur Kahno, Panj. Rec., No. 8 of 1878.

A CHILD under ten years of age is, primá facie, subject to guardianship, and any one removing such child without permission properly obtained takes the risk of such act upon himself; the fact of having omitted to inquire whether the child had a guardian or not is no defence to a charge of kidnapping a minor from lawful guardianship under s. 361 of the Penal Code.—Empress v. Omsabaksh, I. L. R., 3 Bom. 178. [West and Pinhey, J]. Dec. 12, 1878.]

The mother of an illegitimate child is its proper and natural guardian during the period of nurture. And, where the mother, on her death-bed, entrusts the care of such child to a person who accepts the trust, and maintains the child, such a person is "lawfully entrusted," with the care and custody of the minor within the meaning of s. 361 of the Penal Code. The explanation of the words "lawful guardian" in s. 361 is intended to obviate the difficulty the prosecution might be put to in being bound to prove strictly in cases of abduction, that the person from whose care the minor has been abducted was the guardian of such minor within the meaning of the legal acceptation of the word.—Empress v. Pemantle, I. L. R., 8 Cal. 971. [Garth, C.J., and Cunningham and Maclean, J.J. July 9, 1882.]

The following extract from Starling's Criminal Law and Procedure is well worth perusal: "The general principles as to the principal offence involved in these sections are admirably laid down by Bramwell, B., in the case of Reg. v. Ollifier (10 Cox's Crim. Cases 402): 'If a young woman leaves her father's house without any persuasion, inducement, or blandishment held out to her by a man, so that she has fairly got away from home, and then goes to him, although it may be his moral duty to return her to her parents' ouslody, yet his not doing so is no infringement of this Act of Parliament, for the Act does not say he shall restore her, but only that he shall not take her away.' (See also 5 R. J. and

P. J. 152.) 'It is, however, equally clear that, if the girl acting under his persuasion, leaves her father's house, although he is not present at the moment, yet, if he avails himself of that leaving which took place at his persuasion, that would be a taking her out of the father's possession, because the persuasion would be the motive cause of her leaving. though she may not leave at the appointed time, and although he may not wish that she pashould have left at that particular time, yet if, finding she has left, he avails himself of that to induce her to continue away from her father's custody, in my judgment he is also guilty, if his persuasion operate I on her mind so as to induce her to leave. If a woman be forcibly taken away, and afterwards married, or defiled with her own consent, it is within the provisions of these sections; for the offender is not to escape by having prevailed over the weakness of a woman whom he originally got into his power by such base means (Fulwood's Case, Cro. Car, 488; Swenden's Case, 5 St. Tr. 450; 1 Hale 660). And so, too, if she be taken away and married with her own consent, if this be effected by means of fraud; for she cannot be considered, while under the influence of fraud to be a free agent (R. v. Wakefield, Lancaster Assizes, 1827). Under s. 361, it is immaterial whether the girl consents or not, and the taking need not be by force, actual or constructive (Reg. v. Mankletow, Dears C. C. 159). It is no legal excuse that the defendant made use of no other means than the common blandishment of a lover to induce her to elope with him (R. v. Twistleton, 1 Lev. 257; 1 Hawk, c. 44, s. 10). Where a girl was persuaded by the defendant to leave her father's house, and go away with him, without the father's consent, and accordingly left her home alone by a preconcerted arrangement between them, and went to a place appointed, where she was met by the prisoner, and they then went away together without the intention of returning, this was held to be a taking of the girl out of the father's possession, and certainly it would amount to an enticing (Reg. v. Mankletow, supra). So, where the defendant, by concert with the girl, met her, and stayed with her away from her father's house for several nights, sleeping with her; and the jury found that the father did not consent, and that the defendant knew that he did not, and that he took the girl away with him in order to gratify his passions, and then let her return home, and not with the intention of keeping her away from her home permanently, the conviction was held right (Reg. v. Timmins, 1 Bell, C. C., 276). When a girl under sixteen was found in the streets by herself and seduced away, it was held that she was not taken out of the possession of her father, although he was living in the same place, and the girl was living with him (Reg. v. Green, 3 F. and F. 274). was indicted for fraudulently alluring C out of the possession of her mother and stepfather, the latter having the lawful care of her, and B with being an accessory before the fact. C was sent by her mother to five with her grandmother. Instead of going there, she went to B's house, and did not return home when desired by her mother. After remaining with B a month, she left with A, her paternal uncle, and was married to him without her mother's It was held that there was no evidence that the alluring was fraudulent, or knowledge. that the girl was taken out of her mother's possession, and that the facts did not support the indictment (Reg. v. Burrell, I L. R. 354). These illustrations are all of cases of abduc-tion of women, but they will sufficiently illustrate the principles involved in the interpretation of the foregoing sections. If the offence be under s. 361, the child must be shown to be under fourteen if a male, and under sixteen if a female, and it will be no defence to say that the accused did not know the child was under the age, but thought he or she was over the specified age, unless he has substantial ground for supposing that such is the fact, so as to bring the case within s. 79 of the Penal Code, for it was ruled in the case of Reg. v. Ollifler, supra, that a man deals with an unmarried girl at his peril; and in that case the fact that she had told him she was seventeen was held not to excuse him. See also Reg. v. Robins, T. F. and F. 50, where Cockburn, C.J., ruled to the same effect."

THE husband of a Hindu girl of fifteen is her lawful guardian; and if the father of the minor takes away the girl from her husband without the latter's consent, such taking away amounts to kidnapping from lawful guardianship, even though the father may have had no criminal intention in so doing.—IN THE MATTER of DHURONIDHUR GHOSE, I. L. R., 17 . Cal. 298. [Tottenham and Banerjee, JJ. Sep. 28, 1889.]

In a trial with a jury under s. 360 of the Indian Penal Code, the Judge, on the question of intent charged the jury in the following words: "It remains only to consider the question of intent. The charge was that the girl was kidnapped in order that she might be forced or seduced to illicit intercourse. As to this, it is sufficient to say that no other inference is possible under the circumstances. When a man carries off a young girl at night from her father's house, the presumption is that he did so with the intent indicated above. It would be open to him, if he had admitted the kidnapping, to prove that he had some other object; but no other object is apparent on the face of the facts."

CHAP. XVI.] KIDNAPPING, ABDUCTION, SLAVERY, &c. [Secs. 362, 363.

Held that this amounted to a misdirection of the jury. The question of intent was a pure question of fact; but the way in which it had been put to the jury left them no option, but to adopt the view taken by the Judge.—Queen-Empress v. Hughes, I. L. R., 14 All. 25. [Straight, J. Aug. 1, 1891.]

*862. Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp. Punishment for kidnapping.

Punishment for kidnapping.

Punishment for kidnapping.

Punishment for kidnapping.

Getther description for a term which may extend to seven years, and shall also be liable to fine.

THE prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 408, and for wrongful confinement of her under s. 343, it was held that both sentences could not stand, and that, as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone.—Queen v. Ishwar Chunder Jogee, W. R., Sp., 21. [Loch and Seton-Karr, JJ. April 12, 1864.]

THE subject of an Independent State, though not amenable to the British Courts on a charge of culpable homicide committed out of British territories, may be so amenable on a charge of kidnapping from those territories.—Queen v. Dhurmonarain Moitro, i W. R. 39. [Kemp and Glover, JJ. Dec. 9, 1864.]

The conviction of a procuress changed from abduction to enticing, the woman alleged to have been abducted having been of a mature age and a free agent. The conviction of the other prisoners also changed from abetting wrongful concealment under s. 368 of the Penal Code to abetment under s. 116.—QUEEN v. SRIMOTEE PODDEE, 1 W. R. 45. [Kemp and Glover, J]. Dec. 16, 1854.] But according to the ruling in Empress v. Kalls (I. L. R., 5 All. 233), and s. 199 of the Code of Criminal Procedure (Act X. of 1882), it is illegal to alter a charge of abduction to one of enticement.—Ed.

A conviction of abduction quashed, no force or deceit having been practised on the person abducted.—Queen v. Komul Dass, 2 W. R. 7. [Kemp and Glover, JJ. Jan. 10, 1865.]

The abduction of a girl, under 16 years of age, with intent to marry, &c., without the consent of her lawful guardian, is punishable under ss. 363 and 366 of the Penal Code. The consent of the kidnapped person is immaterial, nor is it necessary to show that the taking or enticing-away was by force or fraud.—Queen v. Koordan Sing, 3 W. R. 15. [Glover, J. May 15, 1865.]

A PERSON, in carrying off, without the consent of her lawful guardian, a girl to whom he was betrothed by his father, who, after permitting her to reside occasionally in his house, suddenly changed his mind, and broke off the marriage, is guilty of kidnapping from lawful guardianship, punishable under s. 363 of the Penal Code. The fact of the betrothal however, would considerably diminish the heinousness of the offence.—Queen v. Goordodos Rajbunsee, 4 W. R. 7; 5 Rev., Jud., and Police Journal 149. [Kemp and Seton-Karr, J]. Sep. 11, 1865.]

WHERE a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner, and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under s. 363 of the Penal Code only; and the conviction of the latter under s. 368 only, while the separate conviction of both under s. 366 was quashed.—Queen v. Isree Panday, 7 W. a. 36. [Norman, J. April 8, 1867.]

An enticing away of a child playing on a public road is kidnapping from lawful guardianship.—Queen v. Mussamut Oozeerun, 7 W. R. 62. [Glover,]. May 4, 1867.]

THE offence described in s. 363 of the Penal Code is included in that described in s. 369, the kidnapping and the intention of dishonestly taking property from the kidnapped child being included in the latter section.—Queen v. Shama Sheikh, 8 W. R. 35 [Kemp and Glover,]]. July 8, 1867.]

To support a conviction for kidnapping under ss. 361 and 363, it must be shown that the accused took or enticed away from lawful guardianship the person kidnapped.-Queen v. Nebla Bibke, 10 W. R. 33. [Loch and Glover, J]. Sep. 3, 1868.]

To constitute the offence of kidnapping under s. 363 of the Penal Code, it must be shown that the person was abducted from lawful guardianship, and lawful guardianship is the guardianship of a person who is lawfully entrusted with the care or custody of a spinor.—QUEEN v. BULDEO, 2 N.-W. P. 286. [Turner, Offg. C. J. July 8, 1870.]

A WARRANT for the arrest of a person on a charge of abduction should state the latent with which the offence was committed .- BIDHOOMOOKHEE DABEE v. SREENATH HALDAR, 15 W. R. 4; 6 B. L. R., Ap., 129. [Jackson and Mookerjee, J]. Jan. 21, 1871.]

Accused was convicted by the Magistrate of abetting the kidnapping of a minor. Accused, knowing that the minor had left home without the consent of his parents and at the instigation of one Komaren, the actual kidnapper, undertook to convey the minor to Kandy in Ceylon, and was arrested on the way thither. The Sessions Judge reversed the conviction on the ground that there was no concert between the accused and Komarea previous to the completion of the kidnapping by the latter. Held by the High Court that, so long as the process of taking the minor out of the keeping of his lawful guardian continued, the offence of kidnapping might be abetted, and that, in the present case, the conviction should be of an offence punishable under ss. 363 and 116 of the Penal Code.-Reg. v. Samia Kaundan, I. L. R., 1 Mad. 173. [Morgan, C. J., and Innes, J. Dec. 5, 1876.]

CERTAIN persons were charged under s. 417 of the Penal Code, and were discharged by the Magistrate inquiring into the offence under s. 215 of Act X. of 1872 (corresponding with s. 253 of Act X. of 1882). The Court of Session, considering that the accused persons had been improperly discharged, forwarded the record to the Magistrate of the District, suggesting to him to make the case over to a Subordinate Magistrate, with directions to inquire into any offence, other than the offence in respect of which the accused? persons had been discharged, which the evidence on the record showed to have been committed. The Subordinate Magistrate to whom the case was made over made an inquiry, and committed the accused persons for trial before the Court of Session on charges under ss. 363 and 42c of the Penal Code. It was contended that the Court of Session was not competent to "direct the accused persons to be committed" under s. 206 of Act X. of 1872 (corresponding with s. 438 of Act X. of 1882), the case not being a "Sessions case" within the meaning of that section, and that the commitment was consequently illegal. Held that there was no "direction to commit" within the meaning of that section, that is to say, to send the accused persons at once to the Sessions Court without further inquiry, and whether or not the inquiry was made in consequence of the suggestions of the Court of Session was immaterial, and that the inquiry upon the charges under ss. 363 and 420 of the Penal Code was rightly held by the Subordinate Magistrate and the commitment could not be impeached.—Empress v. Bhup Singh, I. L. R., 2 All. 570. [Straight, J. Dec. 31, 1879.]

THE accused were convicted by the Magistrate of the District of Lahore, exercising enhanced powers under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, 380, Act X. of 1882), of kidnapping a married woman, being a minor, from lawful guardianship, for the purposes of prostitution, and sentenced under ss. 363 and 372, Penal Code, to terms of imprisonment exceeding three years. The proceedings were forwarded to the Sessions Judge, Lahore Division, for confirmation of the sentences. The Sessions Judge holding that ss. 363 and 372, Penal Code, were inapplicable to married female minors, anaulied the convictions, and directed the re-trial of the accused on a charge under s. 498, Penal Code. The Chief Court held that the order of the Sessions Judge was illegal: 1st, because ss. 363 and 372 were applicable to married as well as to unmarried female minors; and andly, because the Sessions Judge was not competent, under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, 380, Act X. of 1882), to direct a new trial upon a new charge; and, 3rdly, because no complaint had been preferred of an offence falling under s. 498, Penal Code.—Crown v. Kammu, Panj. Rec., No. 12 of 1879.

A MOTHER cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily the custody of the mother is the custody of the father, and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian, and not as a taking out of his keeping. But where a Hindu woman left her busband's house, taking with her her infant daughter, and went to the house of A, and on the same day the daughter was married to B, the brother

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of A, without the father's consent, it was held that A was rightly convicted under ss. 100 and 363 of the Penal Code of abetting the offence of kidnapping.—INTHE MATTER OF PRAN KRISHNA SURMA: EMPRESS v. PRAN KRISHNA SURMA, I. L. R., 8 Cal 69; 10 C. L. R. .6. [Wilson and Macpherson, JJ. June 20, 1882.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

* 864. Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to Kidnapping or abducting in order to murder. be put in danger of being murdered, shall be punished with transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

- (a.) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.
- (b.) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

Ditto.

Ditto.

865. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall Kidnapping or abducting with intent secretly and be punished with imprisonment of either description wrongfully to confine person. for a term which may extend to seven years, shall also be liable to fine.

Kidnapping or abducting a woman to compel her marriage, &c.

866. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that a will be compelled, to marry any person against he will, or in order that she may be forced or seduced

to illicit intercourse, or knowing it to be likely that she will be forced or so duced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable : fine.

A CHARGE of abduction will not lie under s. 366 when the woman, being of matus age, herself wishes to become a prostitute.—QUEEN v. SRIMOTEE PODDEE, I W. R. & [Kemp and Glover, JJ. Dec. 16, 1864.]

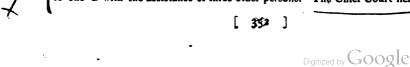
Where a girl of 11 years of age was taken out of the custody of her lawful guardian b the first prisoner, and offered for sale in marriage to another, and the second prisoner legally concealed her, the conviction of the former was upheld under s. 363 of the Peau Code only, and of the latter under s. 368 only, while the separate conviction of both under s. 366 was quashed.—Queen v. Isree Panday, 7 W. R. 56. [Norman, J. April 8, 1867.]

To sustain a charge under s. 366 of abducting a woman with intent that she be locul or seduced to illicit intercourse, there must be evidence to show the intent, or raise to presumption that illicit intercourse was likely to result from the abduction.—Mazz ALDS KHAN v. CROWN, Panj. Rec., No. 23 of 1868.

THE abduction of a girl under 16 years of age with intent to marry without that co sent of her lawful guardian is punishable under ss. 363 and 366 of the Penal Code. consent of the girl is immaterial, nor is it necessary to show that the enticing or take away was by force or fraud.—QUEEN v. KOORDAN SING, 3 W. R. 15. [Glover, J. Manual Research of the girl is immaterial, nor is it necessary to show that the enticing or take 15, 1869.

THERE can be no conviction of the offence of kidnapping under s. 766 of the Per Code, unless it is proved that the accused has taken the girl out of the keeping or calculation of her lawful guardian without her consent.—QUEEN v. MOHIM CHUNDER SIL, 16 W. 42. [Ainslie, J. Sep. 2, 1871.]

D S had two wives, N and J, by the latter of whom he had two daughters. In Po ruary 1876, he went with his wife, N, to a marriage, in another village, leaving 1 two daughters at home. During the temporary absence of D S, J removed her taughters to the house of her brother-in-law, M, and married the elder girl (aged 5 to one G with the assistance of three other persons. The Chief Court held (1) that



word "woman" in s. 366 included a minor female: (2) that there was a kidnapping from he lawful guardianship of D S within the meaning of ss. 361 and 366, notwithstanding the consent of the mother, J, to the girl's removal. Per Smyth, J.—Because the girl, during the temporary absence of the father D S, continued in his possession and under his costrol as her lawful guardian, and was not under the guardianship of her mother, J. Per Plowden, J.—Because the consent of a mere custodian in breach of the trust reposed by the person from whom the right to custody is derived is not the consent of the guardian whose keeping the minor still continues through the custodian .- DHERA SINGH v. Mus-MMMAT KAHNO, Panj. Rec., No. 8 of 1878.

WHERE & girl, under 16 years of age, who was travelling with a chance-protector (not er lawful guardian), went off with the accused voluntarily, and without any false inducenent or force on his part, and without any agreement between the accused and the girl or er protector that she should prostitute herself, an I the accused subsequently hired out the irl on two occasions for the purpose of sexual intercourse, the Chief Court, reversing the rder of the lower Court, held that no offence was made out against accused under s. 373 rs. 366. In order to constitute an offence under s. 373, there must be a taking possession the minor under some agreement or understanding, either with some third person or the ninor, that the minor is to be employed for some purpose specified in the section.—HARDEO

EMPRESS, Panj. Rec., No. 7 of 1880.

THE mother of an illegitimate child is its proper and natural guardian during the eriod of nurture. And where the mother, on her death-bed, entrusts the care of such hild to a person who accepts the trust, and maintains the child, such a person is "lawmily entrusted? with the care and custody of the minor within the meaning of s. 361 of the Penal Code. The explanation of the words "lawful guardian" in s. 361 is intended obviate the difficulty the prosecution might be put to in being bound to prove strictly a cases of abduction that the person from whose care the minor has been abducted was he guardian of such minor within the meaning of the legal acceptation of the word .-MPRESS v. PEMANTLE, L. R., 8 Cal. 971. [Garth, C.J., and Cunningham and Maclean, July 5, 1882.

In a thal with a jury under s. 366 of the Indian Penal Code, the Judge, on the queson of intent, charged the jury in the following words: "It remains only to consider the uestion of intent. The charge was that the girl was kidnapped in order that she might e forced or seduced to illicit intercourse. As to this, it is sufficient to say that no other nference is possible under the circumstances. When a man carries off a young girl at ight from her father's house, the presumption is that he did so with the intent indicated hove. It would be open to him, if he had admitted the kidnapping, to prove that he ad some other object; but no other object is apparent on the face of the facts." Held not this amounted to a misdirection of the jury. The question of intent was a pure uestion of fact; but the way in which it had been put to the jury left them so option ut to adopt the view taken by the Judge.—Queen-Empress v. Hughes, I. L. R., 14 II. 25. [Straight, J. Aug. 1, 1891.]

THE complainant charged the accused with an offence under s. 366 of the Penal Code respect of his wife. The Deputy Magistrate convicted the accused of an offence under 498 of the Penal Code, and sentenced him to one month's rigorous imprisonment. The essions Judge, being of opinion that the Deputy Magistrate had no jurisdiction to conict the accused under s. 498, there being no complaint by the husband under s. 199 of the riminal Procedure Code, and that the offence did not fall under s. 238 of the Criminal recedure Code, referred the case to the High Court. Held that such a case is within the tention of s. 238. The intention of the law is to prevent Magistrates inquiring of their wn motion into cases connected with marriage, unless the husband or other person authored moves them to do so. But when the husband is complainant, and brings his comaint under s. 366, a conviction under s. 498 may properly be had if the evidence be such s to justify a conviction for the minor offence, and yet insufficient for a conviction r the graver on JATRA SHEKH v. REAZAT SHEKH, I. L. R., 20 Cal. 483. [Pigot of Hill, JJ: Sep. 19, 1892.] But see, contra, Empress v. Kallu, I. L. R., 5 All. 233.

367. Whoever kidnaps or abducts any person in order that such person Ct. of Ses. may be subjected, or may be so disposed of as to Cognizable. be put in danger of being subjected, to grievous Not bailable. Kidnapping or abducting in rder to subject a person to rievous hurt, slavery, &c. hurt or slavery, or to the unnatural lust of any per- Not comp. on, or knowing it to be likely that such person will be so subjected or dis-

SECS. 368, 369.] KIDNAPPING, ABDUCTION, SLAVERY, &c. [CHAP. XVI.

posed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

868. Whoever, knowing that any person has been kidnapped or has been wrongfully concealing or keeping in confinement a kidnapped person.

abducted, wrongfully conceals or keeps such person in confinement, shall be punished in the same manner as if he had kidnapped or abducted such

person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

The conviction of a procuress changed from abduction to enticing, the woman alleged to have been abducted having been of mature age and a free agent. The conviction of the other prisoners also changed from abetting wrongful concealment under a. 368 of the Penal Code to abetment under s. 116.—Queen v. Srimotee Podder, I W. R. 45. [Kemp and Glover, J]. Dec. 16, 1864.] It is illegal, however, to altee a charge from abduction to enticement. See Empress v. Kallu, I. L. R., 5 All. 233, and s. 199 of the new Code of Criminal Procedure (Act X. of 1882).—Ed.

WHERE a girl of 11 years of age was taken out of the custody of her lawful guardies by the first prisoner, and offered for sale in marriage to another, and the second prisons illegally concealed her, the conviction of the former was upheld under s. 363 of the Penal Code only, and of the latter under s. 368 only, while the separate conviction of hell under s. 366 was quashed.—QUEEN v. ISREE PANDAY, 7 W. R. 56. [Norman, J. April 8, 1867.]

S. 368 of the Penal Code refers to some other party who assists in concealing and person who has been kidnapped, and not to the kidnappers.—QUEEN v. SHEIKE OCCUR. 6 W. R. 17. [Loch, J. July 2, 1868.]

IF, knowing that a girl has been kidnapped, a person wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Penal Code. Slavery is a condition which admits of degrees, and a person is treater as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or a guardian, or a jailor.—QUEEN v. MIRZA SIKUNDAR BUKHUT, 3 N.-W. I 146. [Turner and Turnbull, J]. June 20, 1871.]

The mere fact of a girl being received into a house, and retained there by the owner even after he may have become aware, or found reason to believe, that she had been kinds napped, does not amount to concealment of her, unless an intention of keeping her or yiew he apparent.—Queen v. Jhurrup, 5 N.-W. P. 133. [Pearson and Jardine,]].

THE mere circumstance of a girl, who had been kidnapped, staying in the house of person for a day or two, does not warrant the conclusion that she was wrongfully concess by that person with the object of baffling any search that might be made for her.—Quest. MUSSUMUT CHUBBOOA, 5 N.-W. P. 189. [Pearson and Jardine, J]. June 12, 1873.]

To constitute the offence of "wrongfully concealing" a person who has been he napped or abducted, there must be a withdrawal of that person from the actual character tion of others, by removal or otherwise; and merely giving false information about supperson is not sufficient.—Phula Singh v. Crown, Panj. Rec., No. 10 of 1874.

Ditto

Kidnapping child under ten with the intention of taking dishonestly any most years with intent to steal from its person.

Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any most able property from the person of such child, she is person.

be punished with imprisonment & either dearn tion for a term which may extend to seven years, and shall also be indicated.

THE offence described in s. 363 of the Penal Code is included in that described s. 369, the kidnapping and the intention of dishonestly taking property from the kidnap child being included in the latter section.—QUEEN v. SHAMA SHEIKH, 8 W.R. 35. [156 and Glover, J]. July 8, 1867.]

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SEPARATE sentences cannot be awarded in one case for abducting a child in order to take property from its person (s. 369), and theft after preparation to cause death, &c. (s. 382). Where the evidence shows that the act was one and the same, the sentence under the latter section was cancelled, there being no evidence of any preparation having been made to cause death, &c., within the meaning of that section.—QUEEN v. KASHEE NATH CHUNGO, 8 W. R. 84. [Seton-Karr and Macpherson, J]. Nov. 30, 1867.]

870. Whoever imports, exports, removes, buys, sells, or disposes of any Ct. of Ses. Buying or disposing of any person as a slave, or accepts, receives, or detains Warrant. person as a slave. against his will, any person as a slave, shall be pun-Bailable. ished with imprisonment of either description for a term which may extend to Not comp. seven years, and shall also be liable to fine.

A BOUGHT a girl, aged 9, and gave her in marriage to his brother. A was convicted by the Magistrate of the district of disposing of the girl as a slave. Held that the conviction was not sastainable.—Crown v. Roda, Panj. Rec., No. 19 of 1867.

R, HAVING obtained possession of D, a girl about 11 years of age, disposed of her to a third person, for value, with intent that such person should marry her, and such person received her with that intent. Held that R could not be convicted of disposing of D as a slave under s. 370 of the Penal Code. Queen v. Mirsa Sikundar Bukhut (3 N.-W. P. 146) remarked upon.—Empress v. RAM KUAR, I. L. R., 2 All. 723. [Stuart, C.]., and Pearson, Spankie, Oldfield, and Straight, JJ. Mar. 8, 1880.]

S TRANSFERRED to A for Rs. 25 his rights in the person of B, a girl of 13 years. In-, a document in which the transaction was recorded, B was described as a vellati or slavegirl purchased by S from P. Held that A was guilty of buying B as a slave within the Aligne meaning of s. 370 of the Penal Code.—Amina v. Queen-Empress, I. L. R., 7 Mad. 277. [Hutchins and Brandt, J]. Feb. 13, 1884.]

871. Whoever habitually imports, exports, removes, buys, sells, traffics, or Ct. of Ses deals in slaves, shall be punished with transportation Cognizable. Habitual dealing in slaves. for life, or with imprisonment of either description Warrant.

Not bailable. for a term not exceeding ten years, and shall also be liable to fine.

Not comp.

872. Whoever sells, lets to hire, or otherwise disposes of any minor under Ct. of Ses., the age of sixteen years, with intent that such minor Presy. Mag., shall be employed or used for the purpose of prosti-Selling of any minor for purposes of prostitution, &c. tution, or for any unlawful and immoral purpose, or Cognizable. knowing it to be likely that such minor will be employed or used for any such Warrant. purpose, shall be punished with imprisonment of either description for a term Not comp. which may extend to ten years, and shall also be liable to fine.

THE prisoners were convicted, the one of disposing of, and the other of receiving, two children, females under the age of 16 years, with intent that such females should be used for the purpose of prostitution The evidence showed that the children were disposed of and registered as dancing girls of a pagoda for the purpose of being brought up as dancing-girls. Held that offences under ss. 372 and 373 of the Penal Code had been committed, and that the prisoners were properly convicted.—Ex-parte PADMAVATI, 5 Mad. H. C. R. 415. [Holloway and Innes, J]. Aug. 4, 1870.]

THE dedication of a minor girl under the age of 16 years to the service of a Hindu temple, by the performance of the shej ceremony, where it was shown that it was almost invariably the case that girls so dedicated led a life of prostitution, was a disposing of such minor, knowing at to be likely that she would be used for the purpose of prostitution, within the meaning or s. 372 of the Penal Code.—REG. v. JAILI BHABIN, 6 Bom. H. C. R. 60. [Warden and Lloyd, J]. Sep. 27, 1869.]

S, a married Mahomedan girl under 16, while living with N, her grandmother, and, in the absence of her husband, formed an adulterous intrigue with two Hindus, with the knowledge of N. S and N were then induced by the Hindus to remove to another village, that S might take up the trade of a prostitute. They there met J, a public woman, with whom they went to reside, and who introduced visitors to S, and received the money paid by them, in exchange for the board and food supplied to S and N. N was convicted, under s. 372, of disposing of a minor for the purpose of prostitution, and; I was convicted, under s. 373, of obtaining possession of a minor for the purpose of prostitution. Held per Jackson, J.—That, on the facts proved, no offence was committed under the Penal Code. Per Glover, J.—N and J were both guilty under ss. 372 and 373 respectively, and their appeals should be dismissed.—Quben v. Noor Jan, 6. B. L. R., Ap., 34; 14 W. R. 39. [Jackson and Glover, J]. July 30, 1870.]

To constitute an offence under s. 372 of the Penal Code it is not necessary that there should have been a disposal tantamount to a transfer of possession or control over the minor's person.—Reg. v. Arnachellam, I. L. R., 1 Mad. 164. [Morgan, C.J., and Innes, J. July 18, 1876.]

The accused were convicted by the Magistrate of the district of Lahore, exercising enhanced powers under s. 36, Criminal Procedure Code(corresponding with ss. 30, 34, and 380, Act X. of 1882), of kidnapping a married woman, being a minor, from lawful guardianship, for the purpose of prostitution, and sentenced, under ss. 263 and 372, Penal Code, to terms of imprisonment exceeding three years. The proceedings were forwarded to the Sessions Judge, Lahore Division, for confirmation of the sentences. The Sessions Judge, holding that ss. 363 and 372, Penal Code, were inapplicable to married female minors, annulled the convictions, and directed the re-trial of the accused on a charge under s. 498, Penal Code. Held that the order of the Sessions Judge was illegal: 1st, because the Sessions Judge was not competent, under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, and 380, Act X. of 1882), to direct a new trial upon a new charge; and 37d, because no complaint had been preferred of an offence falling under s. 498, Penal Code.—Crown v. Kammu, Panj. Rec., No. 12 of 1879.

THE facts which must be proved in order to support a conviction under ss. 372 and • 373 discussed and explained. The gist of the offence under either section consists in the intention that the minor shall be employed or used for the purpose of prostitution, or forany unlawful and immoral purpose, or with the knowledge that it is likely that such minor will be employed or used for any such purpose. In the absence of any intention or knowledge of the kind referred to, the mere buying, selling, letting, or obtaining possession of a minor is not per se a criminal act, as the law of India now stands. Per Rattigan, J.-An unlawful" act may either be defined in connection with the definition of the term "illegal," as contained in s. 43 of the Penal Code, or it may be said that every act is unlawful which the law has prohibited; but, if the purpose be not "unlawful" within either of these definitions, although it may be immoral in a purely ethical sense, the offence will not be made out. The principle laid down by the Chief Justice of the Madras High Court (5 Mad. H. C. R. 473), that to bring a case within the section "it is essential to show that possession of the minor has been obtained under a distinct arrangement come to hetween the parties that the minor's person should be for some time completely in the keeping and under the control and direction of the party having possession, whether ostensibly for a proper purpose or not; thus, excluding the supposition that an obtaining of possession, in the sense of merely having sexual intercourse with a woman, could have been, in the contemplation of the framers of the section," approved. Held per Rattigan, J., in the present case, that, as the facts failed to prove with reference to certain of the accused, and did not necessarily raise the presumption that they, in either obtaining possession of the girl (the subject of the charge), or in subsequently attempting to dispose of her, intended that she should be employed or used for some unlawful and immoral purpose, nor was there anything to show that the said accused knew or had reason to believe that the girl was otherwise than unmarried, there was therefore, not sufficient evidence to establish a charge under s. 372 or s. 373 of the Penal Code, and that the said accused should be acquitted. If the intention of the accused was to dispose of the minor for the purposes of sexual intercourse, which was intended to be illicit, the purpose would be clearly immoral; but, to prove this kind of intercourse unlawful, within the meaning of s. 43 of the Penal Code, it would be necessary to produce such evidence as would support a civil action for seduction, because, in the absence of such evidence, the seduction would not furnish ground for a civil action, and consequently could not be pronounced "unlawful" within the terms of the above section. If the intertion of the accused was to dispose of the girl upon the condition of marriage, the purpose would not be "unlawful," as, although by Hindu and Mahomedan law, a marriage contracted for a minor by any other than his or her lawful guardian would, no doubt, be irregular, and, under certain circumstances, capable of being set aside, it could hardly be said

to be"unlawful and immoral" within the meaning of ss. 372 and 373 of the Penal Code, construing the first of these expressions as above. Held per Brandreth, J. (dissenting from Rattigan, J. as to the acquittal of two of the above-mentioned accused), that the Magistrate of the District (Sialkot), in the present condition of the district, with regard to the public notoriety of the traffic and the vigorous efforts of the police to suppress it, was justified in presuming that all parties who sheltered or passed on the girl in the present case were acting in concert, and knew well that she was a married woman who had been seduced from her husband to be sold for the advantage of the gang to some new husband; and that, therefore, they were guilty of an offence under s. 372, as they had combined to dispose of a minor under the age of 16 years, with the intent that such minor should be used for an unlawful and immoral purpose, vis., a second illegal marriage. Held per Barkley, J. (differing from Brandreth, J., as to this), that it would not be safe to presume that the accused knew, or had reason to believe, that the girl in question was married; but (dissenting from Rattigan, J., as to this) that, even on this assumption, the facts established amounted to an offence. The purpose for which the prisoners obtained possession of the girl was to dispose of her in marriage for a pecuniary consideration; such purpose was clearly "immoral," and the purpose of bringing about an unlawful marriage would be an "unlawful" purpose, whether, under the circumstances of the case, it would be an offence on not, as it would be a purpose to do a thing which the person intending it had no lawful power or right to do. For, to give validity to the marriage of a Hindu minor, the consent, either of one of the guardians prescribed for the purpose by Hindu law, or of some one to whom such guardian had presumably delegated his authority is essential, and, in the absence of such consent, there is no marriage, though, in considering whether consent has been given, the subsequent conduct of the guardian may be taken into account. Held, therefore, that one of the accused was guilty of an offence under s. 373 of the Penal Code, though not under s. 372, as he had not effected his purpose of disposing of the girl when arrested.—Khushala v. Empress, Panj. Rec., No. 27 of 1880.

The accused dedicated his minor daughter as a Basivi by a form of marriage with an idol. It appeared that a Basivi is incapable of contracting a lawful marriage, and ordinarily practises promiscuous intercourse with men, and that her sons succeed to her father's property. Held the accused had committed an offence under Penal Code, s. 372.—Queen-Empresson. Basava, I. L. R., 15 Mad. 75. [Parker and Shephard, JJ. Nov. 5, 17, 1891.]

A DANCING-WOMAN of a temple applied to the manager of the temple for the appointment of a minor girl, whom she falsely described as her daughter, to her "kothu" miras; the manager ordered that the girl be placed on the pay-abstract like other dancing-girls, and she was employed about the temple, though the ceremony of tying the bottu (after which the girl could not be married) did not take place. Held that the above facts constituted primat-facie evidence that an offence under the Penal Code, s. 372, had been committed by the dancing-woman, the manager above named, and the parents of the girl.—Srinivasa v. Annasami, I. L. R., 15 Mad. 41. [Collins, C.J., and Wilkinson, J. Oct. 10, 1891.]

A DANCING-WOMAN (fourth accused) of a temple applied to the manager (first accused) of the temple for the appointment of a girl under the age of sixteen, whom she had adopted as her daughter, to her "kothu" mirasi office, to which duties more or less connected with the preparation of provisions of the temple were attached. The manager, before whom the girl had sung and danced, ordered that she be placed on the pay-abstract like other dancing-girls, and she was employed in the above-mentioned duties about the temple for about five months. It appeared that the dancing-women of the temple lived, part-ly at least, by prostitution, and there was evidence that the girl sang and danced in the temple, received wages, and wore a pottu (an emblem of marriage). The Magistrate upon these facts refused to frame a charge "gainst the manager of the temple and the adoptive mother of the minor under the Penal Code, s. 372. Held per Collins, C.J. (Parker, J., digs.), that the Magistrate should have framed a charge. On a petition under the Criminal Procedure Code, ss. 435, 439, preferred by the complainant, who was a dismissed servant of the temple, after the prosecution had been pending for two years, it appeared that the girl had suffered no harm. Held that, whether or not the Magistrate should have framed a charge, the High Court was not bound to send the case for retrial.—Srinivasa v. Annasami, I. L. R., 15 Mad. 323. [Collins, C.J., and Parker, J. Mar. 8, 9, 22, 1892.]

THE accused dedicated his minor daughter, five or six years of age, to the service of a temple as a dancing-girl. The evidence showed that dancing-girls attached to a tem-

ple, as a rule, led immoral lives. Held that these facts were sufficient to constitute an offence under s. 372 of the Penal Code.—QUEEN-EMPRESS v. TIPPA, I. L. R., 16 Bom. 737. • [Jardine and Telang, J]. Mar. 10, 1892.]

A YOUNG prostitute under 16 years of age was brought to a house of assignation by the accused at the request of the complainant, and for his supposed use on that one occasion, it not being contemplated that the girl should be sold or let out for a period of employment, or for the purpose of being employed by the complainant as a prostitute, or for the purpose of being disposed of by him for that course of life. *Hgld that such a letting-out by the accused was not within the meaning of s. 372 of the Penal Code, which, on the authorities, contemplates a case of letting or hiring or other similar transaction, by which the possession of a girl is obtained with the intention of employing her habitually for the purpose of indiscriminate sexual intercourse. *Dowlath Bee v. Shaik Ali (9 Mad. H. Ch. 473) followed.—Queen-Empress v. Sukee Raur, I. L. R., 21 Cal. 97. [Pigot, J. Aug. 26, 1893.]

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

878. Whoever buys, hires, or otherwise obtains possession of, any minor Buying of any minor for under the age of sixteen years, with intent that such purposes of prostitution, &c. minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

WITH reference to the clause—obtains possession of any minor, &c.—it has been held that, where the charge is the purchase or acquisition of the minor for an immoral purpose, the proper Court to try the offence under s. 373 is the Court having jurisdiction in the place in which the purchase or acquisition was made, and not the Court having jurisdiction in the place of subsequent retention in another district.—C. N. A., N. W. P., Pt. II., 131.

THE prisoners were convicted, the one of disposing of, and the other of receiving, two children, females under the age of 16 years, with intent that such females should be used for the purpose of prostitution. The evidence showed that the children were disposed of and registered as dancing-girls of a pagoda for the purpose of being brought up as dancing-girls. Held that offences under ss. 372 and 373 of the Penal Code had been committed, and that the prisoners were properly convicted.—Ex-parte PADMAVATI, 5 Mad. H. C. R. 415. [Holloway and Innes, J]. Aug. 4, 1870.]

The prisoner was tried upon a charge of having obtained possession of Dowlath Bee a minor aged ten years, with intent that she should be used for an unlawful and immoral purpose, that is to say, for the purpose of illicit intercourse, and having thereby committed an offence under s. 373 of the Penal Code. The evidence showed that the prisoner met Dawlath Bee, a girl eleven years old, in a street at Triplicane, and promised to give her a pice if she would accompany him into an uninhabited house close by, and allow him to have sexual intercourse with her. The girl went willingly with the prisoner; and both were detected in the act of having sexual intercourse. The girl had gone out without permission, had not attained the age of puberty, and the evidence tended to show that the girl had not before had sexual connection. The jury convicted the prisoner. Held by the High Court that the case proved against the prisoner did not make out the offence charged.—Dowlath Bee v. Shaik Ali, 5 Mad. H. C. R. 473. [Scotland, C.J., and Holloway and Innes, JJ. May 27, 1870.]

WHERE a girl, under 16 years of age, who was travelling with a chance-protector (not her lawful guardian), went off with the accused voluntarily and without any false inducement or force on his part, and without any agreement between the accused and the ghl or her protector that she should prostitute herself, and the accused subsequently hired out the girl on two occasions for the purpose of sexual intercourse, held, reversing the order of the lower Court, that no offence was made out against accused under s. 373 or s. 366. In order to constitute an offence under s. 373, there must be a taking possession of the minor under some agreement or understanding, either with some third person or the minor, that the minor is to be employed for some purpose specified in the section.—HARDEO V. Elepress, Panj. Rec., No. 7 of 1880.

CERTAIN persons, falsely representing that a minor girl of a low caste was a member of a higher caste, induced a member of such higher caste to take her in marriage, and to pay money for her, in the full belief that such representation was true. Held per Stuart, C.J., that such persons could not be convicted, on these facts, of offences under ss. 372 and 373 of the Penal Code. Per Oldfield, J., and Straight, J., that, if such girl was disposed of for the purpose of marriage, it could not be said, because the marriage might be invalid under Hindu law, that such persons acted with the intention that she should be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or that they knew it to be likely that she would be employed or used for such purpose, and consequently they could not be convicted of an offence under those sections. Per Pearson, J., and Spankie, J., that such girl having been disposed of for the purpose of marriage, although the marriage might be objectionable under Hindu law, it did not appear that it was wholly invalid, and, therefore, such intent or knowledge could not certainly be presumed, and such persons could not be convicted of offences under those sections.—EMPRESS v. SRI LALL, I. L. R., 2 All. 694. [Stuart, C.J., and Pearson, Spankie, Oldfield, and Straight,]]., Feb. 9, 1889.]

874. Whoever unlawfully compels any person to labour against the Any Mag. Cognizable. will of that person shall be punished with impri- Warrant. Unlawful compulsory lasonment of either description for a term which may Bailable. extend to one year, or with fine, or with both.

AMENDS cannot be awarded in a case under s. 374 of the Penal Code (unlawful compulsory labour), which comes under ch. 14 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with ch. 17 of the new Code of Criminal Procedure (Act X. of 1882).—RATEBAH v. PHOKONDEB, 5 W. R. I. [Phear and Glover, JJ. Jan. 8, 1866.]

Can a woman venter any ci. Stane, be connected of Rape 9 OF RAPE. to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the following descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her 'husband, and that her consent is given because she believes that he is another (Air husband, and that her consent is given because she believes that he is another (Air husband, and that her consent is given because she believes that he is another (Air husband, and that her consent is given because she believes that he is another (Air husband, and that her consent is given because she believes that he is another (Air husband, and that her consent is given because she believes that he is another (Air husband, and that her consent is given because she believes that he is another (Air husband, and that her consent is given because she believes that he is another (Air husband, and that her consent is given because she believes that he is another (Air husband, and that he is another man to whom she is, or believes herself to be, lawfully married by humaning de humaning

Fifthly.—With or without her consent, when she is under twelve* years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under twelve* years of age, is not rape.

876. Whoever commits rape shall be punished with transportation for If the sexual life, or with imprisonment of either description for intercourse a term which may extend to ten years, and shall also with his own Punishment for rape.

attempt to commit your to be fresh in series 5/1

*The word "twelve" has been substituted for the word "ten" by Act X. of 1891, arrest without

wife, the following is . the procedure Summons to ssue in the

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first instance. Bail to be taken. Not compoundable. Triable by Court of Session. In any other case the following is the promay arrest without war-

rant. Warrant to issue in the first instance. Not bailable. Not compoundable. Triable by
Court of Session.

SEXUAL intercourse by a man with a woman without her free consent, i. e., a consent obtained without putting her in fear of injury, amounts to rape; and the Judge should leave the question to the jury, and not direct them to find that the woman's consent after considerable struggle renders the charge of rape nugatory.—QUBEN V.AKBAR KAZES, I W. R. 21. [Kemp and Glover, JJ. Nov. 17, 1864.]

HELD to be improbable and physically impossible that a girl of tender age should be killed by any violence in rape, and not show any external signs of violence.—QUEEN v. BANEE MADHUB MOOKERJEE, 1 W. R. 29. [Kemp and Glover, JJ. Nov. 22, 1864.]

THE measure of punishment in a case of rape should not depend on the social position ` cedure: Police of the party injured, but on the greater or less atrocity of the crime, the conduct of the criminal, and the defenceless and unprotected state of the injured female. — QUEEN v. JHAN-TAH NOSHYO, 6 W. R. 59. [Seton-Karr, J. Aug. 27, 1866.]

> UNDER ss. 57, 376, and 511 of the Penal Code, a sentence of ten years' transportation, or of five years' rigorous imprisonment, may be passed for the offence of attempt to commit rape; but a sentence of seven years' rigorous imprisonment, commutable under s. 59 of the Penal Code to seven years' transportation, is illegal.—Queen v. Joseph MERIAM, 10 W. R. 10; 1 B. L. R., A. Cr., 5. [Loch and Glover,]j. July 6, 1863.

> WHEN an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment.—REG. v. NAIADA, I. L. R., I All. 43. [Turner, Offg. C.]., and Pearson, Spankie, and Oldfield, J. Aug. 23, 1875.]

> An indecent assault upon an woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passions at all events, and in spite of all resistance.—Empress v. Shankar, I. L. R, 5 Bom. 403. [Melvill and Nanabhai Haridas, JJ. Mar. 2, 1881.]

Ct. of Ses Cognizable. Warrant. Not bailable. Not comp.

Unnatural offences.

also be liable to fine.

OF Unnatural Offences. 377. Whoever voluntarily has carnal intercourse against the order of na ture with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall : probable

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

WITH reference to ss. 59 and 377, Penal Code, when an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment.—REG. v. NAIADA, I. L. R., 1 All. 43. [Turner, Offg. C.J., and Pearson, Aug. 23, 1875] Spankie, and Oldfield, JJ.

THE accused was tried by the Sessions Court for an unnatural offence, and convicted on a charge which did not allege the time when, place where, or point to any knows or unknown person with whom, the offence was committed, and without any proofs of those particulars, the facts proved against him only being that he habitually wore woman's clothes, and exhibited physical signs of having committed the offence. The High Court, in the exercise of its criminal revisional jurisdiction, sent for the records, and delivered the following judgment: "This conviction cannot possibly be sustained. The charge upon which the accused was committed, and subsequently tried, alleges neither time when, place where, nor points to any known or unknown person with whom, the particular act charged as an offence against s. 377 of the Penal Code was committed; and for aught that appears to the contrary, the suggested unnatural intercourse may have taken place out of the jurisdiction of the Moradabad Court, and at some place where the Penal Code is not in force. At best, the case for the prosecution is, that the accused is a habitual sodomite; but at present there is no provision of the law that covers it, or renders him amenable to punishment upon evidence of so vague and general a description as that to be found in the present record. I fully appreciate the desire of the authorities at Moradabad to check these

disgusting practices; but neither they nor I can set law and procedure at defiance in order to obtain an object, however laudable. The conviction is quashed, and the accused must be released."—QUEEN-EMPRESS v. KHAIRATI, I. L. R., 6 All. 204. [Straight, J. Jan. 31, 1884.]

CHAPTER XVII.

Of Offences against Property.

INDIAN LAW COMMISSIONERS' REPORT ON OFFENCES AGAINST PROPERTY.

THERE is such a mutual relation between the different parts of the law that those parts must all attain perfection together. That portion, be it what it may, which is selected to be first put into the form of a Code, with whatever clearness and precision it may be expressed and agranged, must necessarily partake, to a considerable extent, of the uncertainty and obscurity in which other portions are still left.

This observation applies with peculiar force to that important portion of the Penal Code which we now propose to consider. The offences defined in this chapter are made punishable on the ground that they are violations of the right of property. But the right of property in itself the creature of the law. It is evident, therefore, that, if the substantive civil law touching this right be imperfect or obscure, the penal law, which is auxiliary to that substantive law, and of which the object is to add a sanction to that substantive law, must partake of the imperfection or obscurity. It is impossible for us to be certain that we have made proper penal provisions for violations of civil rights till we have a complete knowledge of all civil rights; and this we cannot have while the law respecting those rights is either obscure or unsettled. As the present state of the civil law causes perplexity to the Legislator in framing the Penal Code, so it will occasionally cause perplexity to the Judges in administering that Code. If it be matter of doubt what things are the subjects of certain right, in whom that right resides, and to what that right extends, it must also be matter of doubt whether that right has or has not been violated.

For example, A, without Z's permission, shoots snipes on Z's ground, and carries them away. Here, if the law of civil rights grants the prometry in such birds to appears to who can catch them, A has not, by killing them and carrying them away, invaded Z's right of property. If, on the other

hand, the law of civil right declares such birds the property of the person on whose lands they are, A has invaded Z's right of property. If it be matter of doubt what the state of the civil law on the subject actually is, it must also be matter of doubt whether A has wronged Z or not.

By the English law,* pigeons, while they frequent a dove-cot, are the property of the owner of the dove-cot. By the Roman law,† they were not so. By the French law,‡ they are his property at one time of the year, and not his property at another. Here it is evident that the taking of such a pigeon, which would in England be a violation of the right of property. would be none in a country governed by the Roman law, and that, in France, it would depend on the time of the year whether it were so or not.

A lends a horse to B. B sells the horse to Z, who buys it believing in good faith that B has a right to sell it. A sees the horse feeding. He mounts it, and rides away with it. Here, if the law of civil rights provides that a thing sold by one who has no right to sell it, shall, nevertheless, be the property of a boná-fide purchaser, A has invaded Z's right of property. If, on the other hand, A's right is not affected by what has passed between B and Z, A does not commit an infraction of Z's right of property. If it be doubtful whether the right to the horse be in A or in Z, it must also be doubtful whether A has or has not committed an infraction of Z's right.

A path running across a field which belongs to Z has, during three years, been used as a public way. A, in spite of a prohibition from Z, uses it as such. Here, if, by the civil law, an usage of three years is sufficient to create a right of way, A has committed no infraction of Z's right. But, if a prescription of more than three years, or an express grant, be necessary to create a right of way, A has committed an infraction of Z's right of property.

^{*} Blackstone, Book II., ch. 25.

[†] Columbarum fera natura est, nec ad rem pertinet, quod ex consuetudine evolare et revolare solent.—Inst. Lib. II., Tit. I.

^{• ‡} Paillet: Manuel de Droit Français.

case.

INDIAN LAW COMMISSIONERS' REPORT ON OFFENCES AGAINST PROPERTY-contd.

A discovers a mine on land occupied by him. Here, if the civil law assigns all minerals to the occupier of the land, A violates no gight of property by appropriating the minerals. But, if the civil law assigns al minerals to the Government, A violates the right of property by such appropriation.

The sea recedes, and leaves dry land in the immediate neighbourhood of Z's property. Z cultivates the land. A turns cattle on the land, and destroys Z's crops. Here if the civil law assigns alluvial additions to the occupier of the nearest land, A is a wrong doer. If it declares alluvial additions com-

mon, A is not a wrong-doer. If it assigns alluvial additions to the Government, both A and Z are wrong-doers. If it be uncertain to whom the law assigns alluvial additions, it must be also uncertain who is the wrong-doer, and whether there be any wrong-doer.

The substantive civil law, in the instances which we have given, is different in different countries; and in the same country at different times. As the substantive civil law varies, the penal law, which is added as a guard to the substantive civil law, must vary also. And while many important questions of substantive civil right are undetermined, the Courts must occasionally feel doubtful whether the provisions of the Penal Code do or do not apply to a particular

It would, evidently, be impossible for us to determine in the Penal Code all the momentous questions of civil right which, in the unsettled state of Indian jurisprudence, will admit of dispute. We have, indeed, ventured to take for granted in our illustrations many things which properly belong to the domain of the civil law, because, without doing so, it would have been impossible for us to explain our meaning. But we have, to the best of our judgment, avoided questions respecting which, even in the present state of Indian jurisprudence, much doubt could exist. And, in the text of the law, we have, as closely as was possible, confined ourselves to what is, in strictness, the duty of persons engaged in framing a Penal Code. We have provided punishments for the infraction of rights without determining in whom those rights vest, or to what those rights extend. We are inclined to hope that, even if the Penal Code should come into operation before the Code of civil rights has been framed, the number of cases in which the want of a Code of civil rights would occasion perplexity to the criminal tribunals will bear but a very small proportion to those in which no such perplexity

All the violations of the rights of property which we propose to make punishable by this chapter all under one or more of the following heads:

1. Theft.

2. Extortion. — 3. Robbery. 4. The criminal misappropriation property not in possession. — 3. Criminal breach of trust. — 3.

8. Fraudulent bankruptcy.
9 Mischief.

10. Criminal trespass.

All these offences resemble each other in this, that they cause, or have some tendency, directly or indirectly, to cause, some party not to have such a dominion over property as that party is entitled by law to have.

as that party is entitled by law to have.

The first great line which divides these offences may be easily traced. Some of them merely prevent or disturb the enjoyment of property by one who has a right to it. Others transfer property to one who has no right to it. Some merely cause injury to the sufferer. Others, by means of wrongful loss to the sufferer, cause wrongful gain to some other party. The latter class of offences are designated in this Code as fraudulent.

designated in this Code as fraudulept.

Every offence against property may be fraudulently committed. But theft, extortion, robbery, the criminal misappropriation of property not in possession, criminal breach of trust, the receiving of stolen property, fraudulent bankruptcy, and cheating, must be in all cases fraudulently committed. Fraud enters into the definition of every one of these offences. But fraud does not enterint the definition of mischief, or cf criminal trespass.

Theft, the criminal misappropriation of property not in possession, and criminal breach of trust, are, in the great majority of cases, easily distinguishable. But the distinction becomes fainter and fainter as we approach the line of demarcation, and at length the offences fade imperceptibly into each other. This indistinctness may be greatly increased by unskilful legislation. But it has its origin in the nature of things and in the imperfection of language, and must still remain in spite of all that legislation can effect.

We believe it to be impossible to mark with precision by any words, the circumstances which constitute possession. It is easy to put cases about which no doubt whatever exists, and about which the language of lawyers and of the multitude would be the same. It will hardly be doubted, for

Jences in respect of-

Morealle Property - (1) theft (2) Extertion (3) Robbery (4) cri him (5) cri ore out trust, (6) Releving stoler murable Propert - eritants INDIAN LAW COMMISSIONERS' REPORT ON OFFENCES AGAINST PROPERTY-contd.

example, that a gentleman's watch lying on a table in his coom is in his possession, though it is not in his hand, and though he may not know whether it is on his writingtable or on his dressing-table. As little will it be doubted that a watch which a gentleman lost a year ago onea journey, and which he has never heard of since, is not in his possession. It will not be doubted that, when a person gives a dinner, his silver forks, while in the hands of his guest, are still in his possession; and it will be as little doubted that his silver forks are not in his possession when he has deposited them with a pawn-broker as a pledge. But between these extreme cases lie many cases in which it is difficult to pronounce, with confidence, either that property is, or that it is not, in a person's possession.

This difficulty, sufficiently great in itself, would, we conceive, be increased by laws which should pronounce that in a set of rases arbitrarily selected from the mass property is in the possession of some party in whose possession, according to the understanding of all mankind, it is not. The rule of English law respecting what is called breaking bulk is an instance of what we mean. A person who has entrusted a hamper of wine to another to carry to a great distance is not in possession of that hamper of wine. But if the person in trust opens the hamper and takes out a bottle, the possession, according to the English lawbooks, forthwith flies back to the distant owner. Mr. Livingston has laid down a rule of similar kind, the effect of which, if we understand it rightly, is to annul the whole law of theft as he has framed it, and indeed to render it impossible that theft can be committed in Louisiana. Theft is defined by him to be "the fraudulently taking of corporal personal property having some assignable value, and belonging to another, from his possession and without his assent." But in a subsequent clause he says that " neither the ownership nor the legal possession of property is changed by theft alone, without the circumstances required in such case, by the Civil Code, in order to produce a change of property; therefore, stolen goods, if fraudulently taken from the thief, are stole? from the original proprietor." But, if sto en by the second thief from the original proprietor, they must, according to Mr. Livingston's definition of theft, be taken by the second thief out of the possession of the original proprietor. fore, the first thief has left them in the possession of the original proprietor. That is to say, the first thief has not committed theft.

It will not be imagined that we refer to this inconsistency in the Code of Louisiana for the purpose of throwing any censure on the distinguished author of that Code. To do so would be unjust, and in us especially most ungrateful, and also most imprudent. For we are by no means confident that inconsistencies quite as remarkable will not be detected in the Code which we now subt mit to Government. We note this error of Mr. Livingston, for the purpose of showing how dangerous it is for a legislator to attempt to escape from a difficulty by giving a technical sense to an expression which he nevertheless continues to use in a popular sense.

For the purpose of preventing any difference of opinion from arising in cases likely to occur very often, we have laid down a few rules which we believe to be in accordance with the general sense of mankind as to what shall be held to constitute possession. But, in general, we leave it to the tribunals, without any direction, to determine whether particular property is at a particular time in the possession of a particular person or not.

Much uncertainty will still remain. This we cannot prevent. But we can, as it appears to us, prevent the uncertainty from producing any practical evil. The provision contained in cl. 61 will, we think, obviate all the inconveniences which might arise from doubts as to the exact limits which separate theft from misappropriation and from breach of trust.

The effect of that clause will be to prevent the Judges from wasting their time and ingenuity in devising nice distinctions. If a case which is plainly theft comes before them, the offender will be punished as a thief. if a case which is plainly breach of trust comes before them, the offender will be punished as guilty of breach of trust. If they have to try a case which lies on the frontier, one of those thefts which are hardly distinguishable from breaches of trust, or one of those breaches of trust which are hardly distinguishable from theft, they will not trouble themselves with subtle distinctions; but, leaving it undetermined by which name the offence should be called, will proceed to determine, what is infinitely of greater importance, what shall be the punishment.

In theft, as we have defined it, the object of the offender always is to take property which is in the possession of a person out of that person's possession. Nor have we admitted a single exception to this rule. In the great majority of cases our classification will coincide with the popular classification. But there are a few aggravated cases of what we designate as misappropriation and breach of

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trust, which bear such an affinity to theft that it may seem idle to distinguish them from thefts. And it certainly would be idle to distinguish such cases from thefts, if the distinction were made with a view to those cases alone. But, as we have a line of distinction which we think it desirable to maintain in the great majority of cases, we think it desirable also to maintain that line in the few cases in which it may separate things which are of a very similar description.

One offence which it may be thought that we ought to have placed among thefts is the pillaging of property during the interval which elapses between the time when the possessor of the property dies and the time when it comes into the possession of some person authorized to take charge of it. This crime in our classification falls under the head, not of theft, but of misappropriation of property not in possession.

The ancient Roman jurists viewed it in the same light. The property taken under such circumstances, they argued, being in no person's possession, could not be taken out of any person's possession. The taking, therefore, was not furtum, but belonged to a separate head called the crimen expilata hareditatis.* The French lawyers, however, long ago found out a legal fiction by means of which this offence was treated as theft in those parts of France where the Roman law was in force.† Mr. Livingston's definition of theft appears to us to exclude this species of offence, nor indeed do we think that it could be reached by any provision of his Code. That it ought to be punished with severity under some name or other is indisputable. By what name it should be designated may admit of some dispute. If we call it theft, we speak the popular language. If we call it misappropriation of property not in possession, we avoid an anomaly, and maintain a line which, in the great majority of cases, is reasonable and convenient. On the whole, we are inclined to maintain this line.

CRIMINAL BREACH OF TRUST, ETC.

Again, a carrier who opens a letter entrusted to his charge, and takes thence a banknote, would be commonly called a thief. It is certain that his offence is not morally distinguishable from theft. Here, however, as before, we think it expedient to maintain our general rule; and we therefore designate the offence of the carrier, not as theft, but as criminal breach of trust.

The illustrations which we have appended to the provisions respecting theft, the

misappropriation of property not in possession, and breach of trust, will, we hope, sufficiently explain to His Lordship in Council the reasons for most of those provisions.

It may possibly be remarked that we have not, like Mr. Livingston, made it part of our definition of theft that the property should be of some assignable value. We would therefore, observe that we have not done so only because we conceive that the law, as framed by us, obtains the same end by a different road. By one of the general exceptions which we have proposed, it is pro-vided that nothing shall be an offence by resson of any harm which it may cause, or be intended to cause, or be known to be likely to cause, if the whole of that harm is so slight that no person of ordinary sense and temper would complain of such harm. This provision will prevent the law of theft from being abused for the purpose of punishing those venial violations of the right of property which the common sense of mank readily distinguishes from crimes, such as the act of a traveller who tears a twig from a hedge, of a boy who takes stones from another person's groundeto throw at hirds, of a servant who dips his pen in his haster's ink. It does not appear to us that my further rule on this subject is necessary.

EXTORTION.

The offence of extortion is distinguished from the three offences which we have been considering by this obvious circumstance, that it is committed by the wrongful obtaining of a consent. In one single class of cases theft and extortion are in practice confounded together so inextricably that no Judge, however sagacious, could discriminate between them. This class of cases. therefore, has, in all systems of jucisprudence with which we are acquainted, been treated as a perfectly distinct class; and we think that this arrangement, though comewhat anomalous, is strongly recommended by convenience. We have, therefore, made robbery a separate crime.

ROBBERY.

There can be no case of robbery which does not fall within the definition either of theft or of extortion. But in practice a will perpetually be matter of doubt within a particular act of robbery was a theft or an extortion. A large proportion of solderies will be half theft, half extortion. A seizes Z, threatens to murder him calculate to delivers all his property, and begins to pull

† Domat, Sup. III.

[364] 1 Kreft, & criminal mingh s. criminal brades had

^{*} Justinian Dig., Lib. XLVII., Tit. 19.

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off Z's ornaments. Z in terror begs that A will take all he has, and spare his life, assists in taking off his ornaments, and delivers them to A. Here, such ornaments as A took without Z's consent are taken by theft. Those which Z delivered up from fear of death are acquired by extortion. It is by no means improbable that Z's right-arm bracelet may have been obtained by theft, and left-arm bracelet by extortion; that the rupees in Z's girdle may have been obtained by theft, and those in his turban by extortion. Probably in nine-tenths of the robberies which are committed something like this actually takes place, and it is probable that a few minutes later neither the robber nor the person rabbed would be able to recollect in what proportions theft and extortion were mixed in the crime; nor is it at all necessary for the ends of justice that this should be ascertained. For, though in general the consent of a sufferer is a circumstance which very materially modifies the character of the offence, and which ought therefore to be made known to the Courts, yet the consent which a person gives to the taking of his property-by a ruffian who holds a pistol to his breast is a circumstance altogether immaterial.

DACOITY.

His Lordship in Council will perceive that we have provided punishment of exemplary severity for that atrocious crime which is designated in the Regulations of Bengal and Madras by the name of Dacoity. This name we have thought it convenient to retain for the purpose of denoting, not only actual gang-robbery, but the attempting to rob when such an attempt is made or aided by a gang.

RECRIVING STOLEN GOODS.

The law relating to the offence of receiving stolen goods appears to require no comment.

CHEATING.

The offence of cheating must, like that of extortion, be committed by the wrongful obtaining of a consent. The difference is that the extortioner obtains the consent by intimidation, and the cheat by deception. There is no offence in the Code with which we have found it so difficult to deal as that of cheating. It is evident that the practising of intentional deceit for purposes of gain ought sometimes to be punished. It is equally evident that it ought not always to be puffished. It will hardly be disputed that a person who defrauds a banker by

presenting a forged cheque, or who sells ornaments of paste as diamonds, may, with propriety, be made liable to severe penalties. On the other hand, to punish every defendant who obtains pecuniary favours by false professions of attachment to a patron, every legacy-hunter who obtains a bequest by cajoling a rich testator, every debtor who moves the compassion of his creditors by overcharged pictures of his misery, every petitioner who, in his appeals to the charitable, represents his distresses as wholly unmerited, when he knows that he has brought them on himself by intemperance and profusion, would be highly inexpedient. In fact, if all the misrepresentations and exaggerations in which men indulge for the purpose of gaining at the expense of others were made crimes, not a day would pass in which many thousands of buyers and sellers would not incur the penalties of the law. It happens hourly that an article which is worth ten rupees is affirmed by the seller to be cheap at twelve rupees, and by the buyer to be dear at eight rupees. The seller comes down to eleven rupees, and declares that to be his last word. The buyer; rises to nine, and says that he will go no higher. The seller falsely pretends that the article is unusually good of its kind, the buyer that it is unusually bad of its kind; the seller that the price is likely soon to rise, the buyer that it is likely soon to fall. Here we have deceptions practised for the sake of gain, yet no judicious legislator would punish these deceptions. A very large part of the ordinary business of life is conducted all over the world, and no where more than in India, by means of a conflict of skill, in the course of which, deception to a certain extent perpetually takes place. The moralist may regret this; but the legislator sees that the result of the attempts of the buyer and seller to gain an unfair advantage over each other is that, in the vast majority of cases, articles are sold for the prices which it is desirable that they should fetch; and, therefore, he does not think it necessary to interfere. It is enough for him to know that all this great mass of falsehood practically produces the same effect which would be produced by truth, and that any law directed against such falsehood would, in all probability, be a dead letter, and would, if carried into rigorous execution, do more mischief in a month than all the lies which are told in the making of bargains throughout all the bazars of India produce in a century.

If then, it be admitted that many deceptions committed for the sake of gain ought to be punished, and that many such decep-

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tions ought not to be punished, where ought the line to run?

It appears to us that the line which we have drawn is correct in theory, that it is not more inconvenient in practice than any other line must be which can be drawn while the civil law of India remains in its present state, and that it will be unexceptionable whenever the civil law of India shall be ascertained, digested, and corrected.

We propose to make it cheating to obtain property by deception in all cases where the property is fraudulently obtained, that is to say, in all cases where the intention of the person who has by deceit obtained the property was to cause a distribution of property which the law pronounces to be a wrongful distribution, and in no other case whatever. However immoral a deception may be, we do not consider it as an offence against the rights of property, if its object is only to cause a distribution of property which the law recognizes as rightful. A few examples will show the way in which this

principle will operate.

A intentionally deceives Z into a belief that he is strongly attached to Z. A thus induces Z to make a will, by which a large legacy is left to A. Here A's conduct is immoral and scandalous. But still A has a legal right on Z's death to receive the legacy. Even if the clearest proofs of A's insincerity are laid before a tribunal, even if A in open Court avows his insincerity, the will cannot, on that account, be set aside. gain, therefore, which A obtains under Z's will, is not, in the legal sense of the ex-pression, wrongful gain. He has practised deception. He has thus caused gain to himself, and loss to others. But that gain is a gain to which the civil law declares him entitled and which the civil law will assist him to recover if it be withheld from him. That loss is a loss with which the civil law declares that the losers must put up. A, therefore, has not committed the offence of cheating under our definition.

But suppose that the civil law should contain, as we think that it ought to contain, a provision declaring null, a will made in favour of strangers by a testator, who erroneously believed his children to be dead. And suppose that A intentionally deceives Z into a belief that Z's only son has been lost at sea, and by this deception induces Z to make a will by which everything is left to A. Here the case will be different. The will being null, any property which A could obtain under that will would be property which he had no legal right so to obtain, and to which another person had a legal

right. The object of A has therefore been wrongful gain to himself attended with wrongful loss to another party. A has therefore, under our definition, been guilty of cheating.

Again, take the case which we before put of a buyer and a seller. They have told each other may untruths, but hone of those untruths was such as, after the article had been delivered, and the price paid, would be held by a Civil Court to be a ground for pronouncing that either of them possessed what Though the he had no right to possess. buyer has falsely depreciated the article, yet, when he takes it and pays for it, the legal right to it is transferred to him, as well as the possession. Though the seller has falsely extolled the article, yet, when he receives the price and delivers the article, the legal right to the price passes with the possession. However censurable, in a moral point of view, the deceptions practised by both may have been, yet those deceptions were intended to produce a distribution of property strictly legal. Neither the buyer nor the seller, therefore, has been guilty of cheating But if the seller has produced a sample of the article, and has falsely assured the buyer that the article corresponds to that sample, the case is different. If the article does not correspond to the sample, the buyer is entitled to have the purchase-money back. The seller has taken and kept the purchase-money without having a legal right to take or keep it, and it may be recovered from him by a legal proceeding. His gain is, therefore, wrongful, and is attended with wrongful loss to the buyer. He is, therefore, guilty of cheating under the definition.

So, if the seller passes off ornaments of paste on the buyer for diamonds, the price which the seller receives is a price to which. he has no right, and which the buyer may recover from him by an action. Here, therefore, the object of the seller has been wrongful gain attended with wrongful loss to the The seller is therefore guilty of buyer,

cheating

So, if the buyer, intending to acquire possession of the goods without paying for them, induces the seller by deception to take a note which the buyer knows will be dishonoured, the buyer is guilty of cheating. His object is to retain in his own possession raoney which he is legally bound to pay to the seller. The gain which he makes by retaining the money is wrongful gain, and is attended with wrongful loss to the seller. He is, therefore, within the definition.

Whether the principle on which this part of the law is framed be a sound principle, is



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a question which will be best determined by examining, first, whether our definition excludes anything that ought to be included; and, secondly, whether it includes anything that ought to be excluded.

It can scarcely, we think, be contended that our definition excludes anything that ought to be included. For surely it would be unreasonable to punish, as an offence against the right of property, an act which has caused, and was intended to cause, a distribution of property which the law declares to be right, and refuses to disturb. If such an act be an offence, it must be an offence on some ground distinct from the effect which it produces on the state of property. Thus, if a person to whom a debt is due, thinking that he shall obtain payment more easily if he assumes the appearance of being in the public service, wears a badge of office which he has no right to wear when he goes to make his demand, he is guilty of the offence defined in cl. 150; but if he gains only what he has a legal right to possess, if he deprives the debtor only of that which the debtor has no legal right to retain, he is not a wrong-doer as respects property, inasmuch as he has only rectified a wrong distribution of property.

Indeed, it appears to us that there is the strongest objection to punishing a man for a deception, and yet allowing him to retain what he has gained by that deception. What the civil law ought to say may be doubtful: But there can be no doubt that the civil and criminal law ought to say the same thing; that the one ought not to invite while the other repels: that the Code ought not to be divided against itself. To send a person to prison for obtaining a sum of money and yet to suffer him to keep that sum of money, is to hold out at once motives to deter and motives to incite. Humanity requires that punishment should be the last resource, a resource only employed when no other means can be found of producing the desired effect. Penal laws clearly ought not to be made for the preventing of deception if deception could be prevented by means of the Civil Code. To tempt men, therefore, to deceive by means of the Civil Code, and then to punish them for deceiving, is contrary to every sound principle.

We are, therefore, not apprehensive that we shall be thought to have granted impunity to any deception which ought to be punished as cheating.

But it is possible that our definition may be thought to include much that ought to be excluded. It certainly includes many acts

which are not punishable by the law of England or of France. We propose to punish as guilty of cheating a man who, by false representations, obtains a loan of money, not meaning to repay it; a man who, by false representations, obtains an advance of money, not meaning to perform the service, or to deliver the article for which the advance is given; a man who, by falsely pretending to have performed work for which he was hired, obtains pay to which he is not entitled.

In all these cases there is deception. In all, the deceiver's object is fraudulent. He intends in all these cases to acquire or retain wrongful possession of that to which some other person has a better claim, and which that other person is entitled to recover by law. In all these cases, therefore, the object has been wrongful gain, attended with wrongful loss. In all, therefore, there has, according to our definition, been cheating. We cannot see why such acts as these should be treated as mere civil injurieswhy they should be classed with the mere non-payment of a debt, and the mere nonperformance of a contract. They are infractions of a legal right effected by deliberate dishonesty. They are more pernicious than most of the acts which will be punishable under our Code.

They indicate more depravity, more want of principle, more want of shame, than most of the acts which will be punishable under our Code. We punish the man who gives another an angry push. We punish the man who locks another up for a morning. We punish the man who makes a sarcastic epigram on another. We punish the man who merely threatens another with outrage. And surely the man who, by premeditated deceit, enriches himself to the wrongful loss, perhaps to the utter ruin, of another, is not less deserving of punishment.

That some deceptions of this sort ought to be punished is admitted. But almost every argument which can be urged for punishing any is an argument for punishing all. The line between wilful fraudulent deception and good faith is a plain line. If there is any difficulty in applying it, that difficulty will arise, not from any defect in the line, but from the want of evidence in particular cases. But we are unable to find any reason for distinguishing one sort of fraudulent deception from another sort. The French Courts apply a test which appears to us to be very objectionable. They have decided that it is not escroquerie to cheat by false promises, or by exciting chimerical hopes, unless the sufferer had reasons of weight for believing that

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the promises were sincere, and the hopes well-grounded.* This rule seems to us to be a license for deception granted to cunning against simplicity. A weak and credulous person is more easily imposed on than a judicious and discerning person. And just so an infant is poisoned with a dose of laudanum which would hardly put a grown person to sleep; yet the poisoner is a murderer: a pregnant woman is grievously hurt by a blow which would make no impression on a boxer; yet the person who gives such a blow is punished with exemplary severity. The law in such cases inquires only whether the harm has been voluntarily caused or no. And why should the violation, by deceit, of the right of property be treated differently? The deceiver proportions his artifices to the mental strength of those whom he has to deal with, just as the poisoner proportions his drugs to their bodily strength. And we see no more reason for exempting the deceiver from punishment, because he has effected his purpose by a gross fiction which could have duped only a weak person, than for exempting the poisoner from punishment because he has effected his purpose with a few drops of laudanum, which could have been fatal only to a young child.

Some persons may be startled at our proposing to punish as a cheat every man who obtains a loan by making promises of payment which he does not mean to keep. But let it be considered that a debtor, though he may have contracted his debts honestly, though it may be from absolute inability that he does not pay them, though his misfortunes may be the effect of no want of industry or caution on his part, is now actually liable to imprisonment. Surely it is unreasonable to detain in prison the man who, by mere misfortune, has involuntarily violated the rights of property, and to leave unpunished the man who has voluntarily, and by wilful deceit, attacked those rights, if only he is lucky enough to have money to satisfy the demands on him.

For example, A and B both borrow money from Z. A obtains it by boasting falsely of his great means, of the large remittances which he books for from England, of his expectations from rich relations, of the promises of preferment which he has received from the Government. Having obtained it, he secretly embarks on board of a ship, intending to abscond without repaying what he has borrowed. B, on the other hand, has obtained a loan without the smallest misrepresentation, and fully purposes to repay it.

The failure of an agenty-house in which all his funds were placed renders it impossible for him to meet his engagements. Can be be doubted which of these two debtors rather to be sent to prison? Can Rid doubted that A is a proper subject of ishment, and that Bois not so? Yet at sent A, if he is arrested before the ship ! and lays down the money, enjoys es punity, while B may pass years in a would be improper for us here to dist length the question of imprisonment for But it seems clear that, whether it not proper that a debtor, as such, sho imprisoned, a distinction ought to be between the honest and dishonest We are inclined to believe hat the ind minate imprisonment of all debtors be found to be unnecessary if this distinct were made. But, while they are all p the same footing, the law must be f upon a rough calculation of the chances of dishonesty. All must be treated womether honest debtors ought to be treated, because none are treated so severely as dishe A respectable debtors ought to be treated. man must be imprisoned for a storm, a bed season, or a fire, because his dishonest anighbour is not liable to criminal processing for cheating. We are satisfied that the coly way to get rid of imprisonment for debt, as debt, is to extend the penal law on the subject of cheating in a manner similar to that in which we propose to extend it.

The provisions which we have framed on the subject of fraudulent bankruptcy are necessarily imperfect, and must remain so until the whole of that important part of the law has undergone an entire revision.

MISCHIEF.

The provisions which we propose on the subject of mischief do not appear to us to require any explanation.

TRESPASS.

We have given the name of trespass to every usurpation, however slight, of dominion over property. We do not propose to make trespass, as such, an offence, except when it is committed in order to the commission of some offence injurious to some person interested in the property on which the trespass is committed, or for the purpose of causing annoyance to such a person. Even then, we propose to what it with a light punishment, unless it be attended with aggravating circumstances.

^{*} Paillet: Manuel de Droit Français. Note on cl. 408 of the Penal Code.

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These aggravating circumstances are of two sorts. Criminal trespass may be aggravated by the way in which it is committed.

It may also be aggravated by the end for which it is committed.

There is no sort of property which it is so desirable to guard against unlawful intrusion as the habitations in which men reside, and the buildings in which they keep their goods. The offence of tree passing on these places we designate as house trespass, and we treat it as an aggravated form of criminal trespass.

House-trespass, again, may be aggravated by being committed in a surreptitions or in a violent manner. The former aggravated form of house-trespass we designate as lurking house-frespass; the latter we designate as house-breaking. Again, housetrespass in every form may be aggravated

by the time at which it is committed. Trespess of this sort has, for obvious reasons, always been considered as a more serious offence, when committed by night, than when committed by day. Thus, we have four aggravated forms of that sort of criminal trespass which we designate as house-

trespass, lurking house-trespass by night, and house-breaking by night.

These are aggravations arising from the way in which the criminal trespass is com-

mitted. But criminal trespass may also be aggravated by the end for which it is committed. It may be committed for a frolic. It

may be committed in order to a murder. It may also often happen that a criminal trespass which is venial, as respects the mode, may be of the greatest enormity as respects the end; and that a criminal trespass committed in the most reprehensible mode may be committed for an end of no great atrocity.

Thus, A may commit house-breaking by night for the purpose of playing some idle trick on the inmates of a dwelling. B may

commit simple criminal trespass by merely entering another's field for the purpose of murder or gang-robbery. Here A commits

trespass in the worse way. B commits trespass with the worse object. In our provisions, we have endeavoured to combine the aggravating circumstances in such a way that each may have its due effect in settling

also something more ine comment of the start of Theft. 878. Whoever, intending to take dishonestly any moveable property out

Theft.

consent, moves that property in order to such taking, IL makes me diffe is said to commit theft. to benow of Explanation 1.—A thing, so long as it is attached to the earth, not being

of the possession of any person without that person's.

moveable property, is not the subject of theft; but it becomes capable of which to assure being the subject of theft as soon as it is severed from the earth. dominion oun 1L

the punishment.

• Explanation 2.—A moving, effected by the same act which effects the Permanut_. severance, may be a theft.

an obstacle which prevented it from moving, or by separating it from any other. hum Jones ... thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move every thing which, in consequence of the first the motion so caused is moved by that arises? the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority, either express or implied.

Illustrations.

(a.) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

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- (b.) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.
- (c.) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the ballock begins to move, A has committed theft of the treasure.
- (d.) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishoustly runs away with the plate, without Z's consent. A has committed theft.
- (e.) Z, going on a journey, entrusts his plate to A, the keeper of a warefouse, till Z shall return. A carries the plate to a goldsmith, and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.
- (f.) A finds a ring belonging to Z on a table in the house which Z occupies Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.
- (g.) A finds a ring lying on the high road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.
- (h.) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection. A hides the ring is a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place, and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.
- (i.) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.
- (j.) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.
- (k.) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he had borrowed on the watch, he commits that, though the watch is his own property, inasmuch as he takes it dishonestly.
- (1.) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft.
- (m.) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.
- (n.) A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.
- (o.) A is the paramour of Z's wife. She gives A valuable property which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.
- (p.) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, ha does not commit theft.

Rulings.

FISH in a public river cannot be said to be property in the possession of the person who may have the fishery-right, and the infringement of that right is not theft under s. 378 of the Penal Code. The accused were charged with unlawfully taking fish along with some eleven others in a public river, the right of fishing in which had been let out by the Go-



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verament to the complainant, and the lower Court, amongst other offences, convicted them of theft, criminal manapropriation, mischief, criminal trespass, and unlawful assembly. Held that the conviction was wrong, and that no offence had been committed.—BHAGIRAM Dome v. Abar Dome, I. L. R., 15 Cal. 388. [Norris and Ghose, JJ. Jan. 24, 1888.]

A DUG up and immediately carried away, without any authority or right, several cartloads of earth, part of unassessed lands of a village. Held that A was not guilty of theft. —QUEEN-EMPRESS v. KOTAYYA. I. L. R., 10 Mad. 255. [Collins, C. J., and Kernan and Brandt, JJ. Mar. 18, 1867.] But see the following ruling:—

EARTH, that is soil, and all the component parts of the soil, inclusive of stones and minerals, when severed from the earth or land to which it was attached, is moveable property capable of being the subject of theft. Whoever dishonestly severs such earth from the earth commits theft. Where a person dishonestly carried away 100 cart-loads of earth from the complainant's land, held that he was guilty of theft. Queen-Empress v. Kotayya (I. L. R., 10 Mad. 255) dissented from,—QUEEN-EMPRESS v. SHIVRAM, I. L. R., 15 Bom. 7029 [Birdwood and Parsons, JJ. Mar. 24, 1890.]

THE word "object" in s. 205 of the Penal Code does not include animate objects. A bull dedicated and set at large at the Sradha of a Hindu in accordance with religious usage is not an "object" within the meaning of that section. Where such an animal was killed by certain Mahomedans secretly and at night in the presence of none but Mahomedans for the sake of the meat and value of the skin, held that no offence had been committed under s. 295. Queen-Empress v. Imam Ali (1. L. R., 10 All. 150) followed. Held, turther, that such a bull is not "moveable property" within the meaning of ss. 378 and 403, or "property" within the meaning of s. 425 of the Penal Code, and could not therefore be the subject of theft, criminal misappropriation, or mischief. The fact that such a bull receives some attention from the cowherd of the persons who set it at liberty, and is daily fed by him by direction of his employers, and is not used for breeding purposes without their permission being asked, is not inconsistent with a total surrender by those who set it at liberty of all their rights as proprietors. Queen-Empress v. Bandhu (I. L. R., 8 All. 51) followed. Queen-Empress v. Nalla (I. L. R., 11 Mad. 145) referred to and commented on. For the purpose of construing a section of an Act, and ascertaining the intention of the Legislature, the Report of the Indian Law Commissioners or a Select Committee appointed to consider a Bill may be referred to. Queen-Empress v. Kartick Chunder Das (I. L. R., 14 Cal. 721) followed.—ROMESH CHUNDER SANNYAL v. HIRU MONDAL, I. L. R., 17 Cal. 852. [Norris and Macpherson, JJ. Mar. 27 & April 15, 1890.]

A CHARGE of theft will lie under s. 378 of the Penal Code (Act XLV. of 1860), even where there is no intention to assume entire dominion over the property taken, or to retain it permanently. When a person takes another man's property, believing, under a mistake of fact and in ignorance of law, that he has a right to take it, he is not guilty of their because there is no dishonest intention, even though he may, cause wrongful loss within the meaning of the Penal Code. The accused was the brother of a farmer or contractor of a public ferry on the Tadri river. He seized a boat belonging to the complainant while conveying passengers across the creek which flows into the river at a point within three miles from the public ferry. His intention was apparently to compel persons who had to cross the creek to use the ferry in the absence of the complainant's boat, and thereby increase his brother's income derived from fees to be paid by passengers crossing the creek. The accused had no reason to believe that he was justified in Seizing the boat. Held that the accused was guilty of theft, though it was not his intention to convert the boat to his own use, or deprive the complainant permanently of its possession.—Queen-Empress v. Nagappa, I. L. R., 15 Bom. 344. [Birdwood and Jardine, JJ. Jan. 27, 1890.]

279. Whoever commits theft shall be punished with imprisonment of Any Mag either description for a term which may extend to Warrant. Punishment for theft. three years, or with fine, or with both.

Not bailable. Not comp.

CHARGE.

, committed theft of , at THAT you, on or about the day of , and thereby committed an offence , valued at Rs. the property of punishable under s. 379 of the Indian Penal Code, and within, &c.

CHARGE FOR THEFT AFTER A PREVIOUS CONVICTION.

"I [name and office of Magistrate, &c.] hereby charge you [name of accused person] as follows:—

That you, on or about the day of , at , committed theft'and thereby committed an offence punishable under s. 379 of the Indian Penal Code and within the cognizance of the Court of Session [or High Court, or Magistrate, as the case may be].

And you the said [name of accused] stand further charged that you, before the committing of the said offence, that is to say, on the day of had been convicted by the [state Court by which conviction was had] at of an offence punishable under Ch. XVII. of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night [describe the offence in the words need is the section under which the accused was convicted], which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under s. 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXVIII. (III.).

THE offence of a person who makes away with property which has been placed in his charge and possession is not theft but criminal breach of trust.—In the Matter of Bharut Chunder Christian, 1 W. R. 2. [Kemp and Glover, JJ. Aug. 8, 1864-]

THEFT is defined (s. 378) to be a dishonest taking of any moveable property out of the possession of any person without that person's consent.—QUEEN v. MADAREE CHOWKEEDAR, 3 W. R. 2. [Peacock, C. J., and Kemp and Glover.]], Feb. 16, 1865.]

A PERSON can be convicted of abetment of theft under the 1st explanation of s. 107 of the Penal Code only if he either procures or attempts to procure the commission of the theft. Mere subsequent knowledge of the offence is insufficient.—Queen v. Shullerrudden, 2 W. R. 40. [Kemp and Glover, J]. Mar. 14, 1865.]

THE theft and the taking and retention of stolen goods form one and the same offeace, and cannot be punished separately.—QUEEN v. SREEMUNT ADUP, 2 W. R. 62. [Glover, J. April 16, 1865.]

HOUSE-BREAKING by night and theft form a single and entire offence, and cannot be punished separately.—Queen v. Толлокосн, 2 W. R. 63. [Jackson and Glover, JJ. April 19, 1865.]

THE term "dishonest" is applied to a person who does anything with the intention for causing wrongful gain or wrongful loss. Where the accused forcibly seized a woman's bullocks for something which her husband may have owed in his lifetime, he was had so have caused wrongful loss, and therefore guilty of theft.—Ouren v. Prednath Baneries, Wyman's Rev., Crim., and Civ. Rep., p. 60; 5 W. R. 68. [Jackson, J. April 16, 1866.]

It is illegal to convict prisoners of mischief as well as of theft, the offences charged being that they had cut down Government trees without leave, and appropriated them.

—Reg. v. Narayan Krishna, 2 Bom. H. C. R. 392. [Couch, C.J., and Newton, J. June 27, 1866.]

THE prisoner, acting bond fide in the interest of his employers, and finding a party of fishermen poaching on his master's fisheries, took charge of the nets, and retained possession of them, pending the orders of his employers. Held that the prisoner was not guilty of theft.—Queen v. Nobin Chunder Holdar, 6 W. R. 79. [Kemp and Markby,]]. Sep. 28, 1866.]

THEFT is the sequel of, and cannot be separated from, house-brecking. A cumulative sentence of three years' imprisonment was held to be illegal*in such a case..-Mussahur Daoudh, 6 W. R. 92. [Kemp and Markby, JJ. Dec. 19, 1866.]

STEALING property, and then destroying it, are but one offence, vis., theft—not two, theft and mischief; but the fact that the offender has rendered the property irrecoverable should be considered in awarding punishment.—Crown v. Hamira, Panj. Rec., No. 37 of 1866.

No security can legally be demanded from persons convicted of theft.—QUEEN v. Kuner Sonar, 7 W. R. 57. [Seton-Karr and Markby, JJ. April. 5, 1867.]

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A PERSON acting under a claim of right (however ill-founded such claim may be) is not guilty of theft by asserting it.—QUBEN v. RAM CHURN SINGH, 7 W. R. 57. [Seton-Karr and Markby, JJ. April 15, 1867.]

SEPARATE convictions and sentences under ss. 429 and 379, and under ss. 457 and 380 of the Penal Code, were set aside, and the convictions under s. 429 in the former case, and under s. 457 in the latter, allowed to stand.—QUEEN v. SAHRAE, 8 W. R. 31. [Jackson and Hobhouse, J]. July 1, 1867.]

Where a Court finds that parties came with a number of armed men, and carried off a crop, the finding amounts to that of a forcible carrying-oft without the consent of the owner. Even if they took no part in the actual taking, they must, with reference to s. 114, Penal Code, be considered guilty of the substantive offence under s. 378.—QUEEN v. Shib Chunder Mundle, 8 W. R. 59. [Kemp and Glover, J]. Aug. 5, 1867.]

APRISONER who consented to form one of a party who committed theft, and resiled from his agreement, but was present at the commission of theft, does not come within cl. 2, s. 107, Penal Code, and ought not to have been convicted of the theft. but of the abetment thereof under cl. 3, s. 107, and s. 109, Penal Code, read together.—Queen v. Boobhun Mooshur. 8 W. R. 78. [Glover, J. Oct. 30, 1867.]

WHERE loss is occasioned to a person whose property has been stolen, it is not illegal for the trying Magistrate to award a portion of the fine inflicted on the accused as amends to the owner of such property, although the stolen property is recovered and restored to the owner.—Reg. v. Yessappa bin Ningappa, 5 Bom. H. C. R. 41. [Newton, Offg. C.], and Tucker, J. May 20, 1868.]

Conviction and sentence by a Magistrate reversed, as the act of which the accused were convicted—taking pods (almost valueless) from a tree standing upon Government waste ground—came within the meaning of s. 95 of the Penal Code, and did not, therefore, amount to an offence. Reg. v. Kasya bin Ravji, 5 Bom. H. C. R. 35. [Newton, Offg. C.J. and Tucker, J. May 20, 1868.]

WHERE a policeman in whose sight a theft was committed arrested the thief, and, being himself unable to take or send the accused to a Magistrate, sent a report on which the Magistrate issued a warrant, held that, under these circumstances, the accused was legally brought before the Magistrate.—Reg. v. Mahipya valad Bomya Mahar, 5 Bom. H. C. R. 99. [Newton and Tucker,]]. Sep. 24, 1868.]

A CONVICTION for theft under the Penal Code is illegal if the owner has given up all property in, and all possession of, the subject of the alleged theft. Thus, if a man digs up the carcass of a bullock, which the owner, suspecting to have been poisoned, caused to be buried, he cannot be convicted of theft.—Pro., Feb. 5, 1869, 4 Mad. H. C. R., Ap., 30.

Where, in a case in which a prisoner was convicted of theft and also of receiving stolen property, the sentence passed was really one for theft, the High Court nevertheless refused to allow the conviction for receiving stolen property to remain on the record against the accused, and reversed it.—Queen v. Sheeb Chunder Haree, 11 W. R. 12n. [Jackson and Hobhouse, JJ. Mar. 1, 1869.]

A MAHOMEDAN married woman may be convicted of theft, or abetment of theft, in respect of the property of her husband.—Reg. v. Khatabi, wife of Sheikh Ismael, 6 Bom. H. C. R. g. [Tucker and Gibbs, J]. Mar. 4, 1869.]

LOODUN was on terms of intimacy with Marwareed, who encouraged his visits; and when Loodun's father sent him away with a view to break up the connection, the woman followed him. She was brought back, and Loodun returned and renewed the intimacy with her. He was prohibited from his father's house, and carried away things which he gave to the woman. Loodun was convicted by the Magistrate of house-trespass in order to commit theft, and Marwareed of abetment of that offence. Held that her conviction could not be sustained, as no act subsequent to the commission of an offence can be construed into an abetmen t.—Crown v. Loodun, Panj. Rec., No. 11 of 1869.

The moving by the same act which effects the severance may constitute a theft. Thus, the cutting down of trees without removing them may amount to theft.—Pro., Oct. 22, 1870, 5 Mad. H C. R., Ap., 36.

THE prisoner was convicted of theft on his own confession. The charge to which the prisoner pleaded did not allege the taking out of the possession of some person dishonest-

ly, and there was no evidence of such taking. Held that the conviction was bad.—Pro., Oct. 28, 1870, 5 Mad. H. C. R., Ap., 37.

A HINDU woman, who removes from the possession of her husband, and without his consent, her palla or stridhan, cannot be convicted of theft, nor can any person who joined her in removing it be convicted of that offence.—Reg. v. Nath Kalvan and Bai, 8 Bom. H. C. R. 11. [Gibbs and Melvill, JJ. Jan. 9, 1871.]

The mere assertion of a fair claim of property or right, or the mere existence of a doubt as to right, is not sufficient to justify an acquittal in a case of plunder of crops. The claim to the property must be proved by evidence to be fair and good.—NASSIB CHOWDHRY T. NANOO CHOWDHRY, 5 W. R. 47. [Bayley and Mitter, JJ. Mar. 25, 1871.]

S. 378 of the Penal Code does not include under the offence of theft the case when one joint proprietor takes into his own sole possession property belonging to himself and his co-proprietor which had previously been in their joint-custody. K, the gomashts of a shop, was coming out of the Small Cause Court with some account-books belonging to that shop. A, who had a share in that shop, took them out of the possession of K, and kept them against the will of K, saying they were his. The Deputy Magistrate found A guilty of theft, and convicted him. On reference, the High Court quashed the conviction on the grounds: (1) that, when property is in the possession of a person's servant, it is in that person's possession within the meaning of s. 27 of the Penal Code, and, therefore, s. 378 does not include under the offence of theft, the case where one joint-proprietor takes into his own sole possession property belonging to himself and his co-proprietors, which had been previously in their joint-possession; (2) that the books were not taken dishonestly and that, if any offence was committed, it was not theft.—Kiamuddin v. Allah Bussel 15 W. R. 51: 6 B. L. R., Ap., 133; 13 B. L. R. 210n. [Norman, Offg. C.]., and Loch.]

April 15, 1871.]

A MERR plea by an accused that the property of the theft of which he is charged is his own property, unsupported by proof or by some circumstances which tend to indicate that there is some truth in the statement, is not sufficient to entitle him to be summarily discharged.—Runnoo Singh v. Kali Churn Misser, 16 W. R. 18; 7 B. L. R., Ap., 55. [Bayley and Paul, JJ. July 11, 1871.]

A BOAT may be the subject of theft. Although under s. 442 it is for certain purposes classed with houses, it does not cease to be moveable property under s. 378.—QUEEN D. MEHAR DOWALIA, 16 W. R. 53. [Kemp, Offg. C.]., and Ainslie, J. Oct. 6, 1871.]

Inability to prove a prescriptive right to fish within certain limits free from payment of rent is quite distinct from the want of right of any kind to fish therein, rendering a person so fishing liable to be brought up for the theft of fish taken by him.—Khetter Nath Dutt v. Indro Jalla, 16 W. R. 68. [Kemp and Jackson, JJ. Dec. 16, 1871.]

THE carrying-off of certain buffaloes belonging to the complainant by order of the accused and the retention of them in the custody of the latter's servant, were held to amount to an abetment of theft as defined in the Penal Code.—In the Matter of Tarines Prosaud Banerjee, 18 W. R. 8. [Kemp and Glover, J]. June 14, 1872.]

Accused was convicted by an Assistant Magistrate of theft of paddy. The facts found were that prisoner was found in possession of rice not thrashed in the usual way, and that having no paddy-land of his own, he failed to account satisfactorily for the possession of the rice. Held that this was such a case as no Judge would leave to a jury, and that the conviction must be quashed as founded upon evidence which, if all true, would not justify the inference of guilt. The meaning of the term corpus delicti explained.—Pro., Feb. 18/1873, 7 Mad. H. C. R., Ap., 19.

The taking of fish in that portion of a navigable river over which a right of jalkar exists in another person does not fall within s. 378, Penal Code.—HORIMOTI MODDOCK v. DENO NATH MALO, 19 W. R. 47. [Kemp and Pontifex, JJ. Mar. 20, 1873.]

Where the accused caught fish in a portion of a navigable river which was claimed by the prosecutor, it was held they could not be convicted of theft, and that, if the right of the prosecutor was infringed, he could sue in the Civil Court for damages.—Bhusun Parul v. Denonáth Banerjee, 20 W. R. 15. [Jackson and Mitter, J]. May 7, 1873.]

DISHONEST removal of salt naturally formed in a creek, which was under the supervision of an officer belonging to the Customs Department, constitutes theft, the salt having been legally appropriated by such officer (per Bayley and West, JJ.). But removal for one's

own use from a creek of such salt not legally appropriated constitutes no offence either under the Penal Code or Act XXXI. of 1850 or XXVII. of 1837, though, under s of the latter Act, made applicable by s. 8 of the former, the salt removed becomes liable to detention (per Lloyd and Kemball, J.).—Reg. v. Mansang Bhavsang, 10 Bom. H. C. R. 74. [Bayley and West, JJ. May 21, 1873.]

IN a charge for stealing it must be proved that at the time of the act being done the property stolen was in the possession of the prosecutor.—Hossenee Sheikh v. Rajerishna Chatterjee, 20.W. R. 80. [Phear and Morris, J]. Nov. 18, 1873.]

A SENTENCE of whipping cannot, with reference to Act VI. of 1864, s. 7, be passed on a conviction for theft under s. 379, Penal Code, as the former section only provides for sentences of imprisonment for a term not exceeding three years.—Queen v. Esan Chunder Dey, 21 W. R. 40. [Jackson and Ainslie, J]. Feb. 5, 1874.]

Possession of property which has been stolen from the owner is generally, at best, only evidence of theft when the date of the theft is so recent as to make it reasonable to presume in the absence of explanation that the person in whose possession the property is found must have obtained the possession by stealing.—QUEEN v. POROMESHUR AHEER, 23 W. R. 16. Phear and Morris, []. Jan. 8, 1875.]

THE High Court declined to interfere with the order of a Deputy Magistrate, who, in a case of theft, dismissed the complaint, and fined the complainant under s. 209 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 250 of the new Code of Criminal Procedure (Act X. of 1882) for making a frivolous and vexatious complaint.

—KALI CHURN LAHIRI v. SOSHEE BHOOSHUN SANYAL, 23 W. R. 17. [Phear and Ainslie,]]. Jan. 13, 1875.]

THE illegal seizure and impounding of cattle is not theft within the meaning of the Penal Code, even if effected with the malicious intent of subjecting the owners to additional expense, inconvenience, and annoyance. A Sessions Judge has no power to release on bail persons convicted by the Magistrate, pending a reference to the High Court under Act X. of \$872, s. 296 (corresponding with Act X. of \$882, s. 438).—ARADHUN MUNDUL B. MYAN KHAN TAKADGEER, 24 W. R. 7. [Glover and Mitter, J]. June 4, 1875.]

ALTHOUGH & person who is convicted of theft cannot, in respect of the same property, be convicted at the same time of receiving stolen property, yet a person who is acquitted of the theft of any property, or who is not charged with stealing it, may, in respect of the identical property, be charged with, and convicted of, receiving it, knowing it to be stolen: so that the mere fact of a person's having once been acquitted of the charge of stealing any property does not of itself prevent his trial at any future time on the charge of receiving the same property knowing it to be stolen.—Queen v. Nyaz Ali, 25 W. R. 47. [Kemp and Glover, JJ. May 25, 1876.]

A DOUBLE sentence for theft and mischief is illegal and improper.—BICHUK AHBER W. AUHUEK BHOONEEA, 6 W. R. 5. [Jackson and Campbell, JJ. June 18, 1876.]

Possession of wood by a forest-inspector, who is a servant of Government, is possession of the Government itself; and a dishonest removal of it, without payment of the necessary fees, from his possession, albeit with his actual consent, constitutes theft within the meaning of s. 378, if that consent was unauthorized or fraudulent.—Reg. v. Hansarta, I. L. R., I Bom. 610. [Melvill and Kemball, J]. Feb. 26, 1877.]

A SOUGHT the aid of B with the intention of committing a theft of the property of B's master. B, with the knowledge and consent of his master, and for the purpose of procuring A's punishment, aided A in carrying out his object. On the prosecution of A for theft, held that, as the property removed was so taken with the knowledge of the owner, the offence of theft had not been committed; held further that it is not necessary to an indictment for the abetment of an abetment of an offence to show that such offence was actually committed. EMPRESS v. TROYLUCKHO NATH CHOWDHRY, I. L. R., 4 Cal. 366:3 C. L. B. 525. [Jackson and White, JJ. Nov. 12, 1878.]

THE accused caught fish in the Sundri-dund, a sheet of water five miles long by twenty feet broad. The right of fishing in this and other dunds had been leased to a contractor by the Government. Held that the fish in the pond were not in the possession of any person within the meaning of s. 378, and could not, therefore, be the subject of theft.—CROWN 7. JAMAL, Panj. Rec., No. 11 of 1878.

S A, a resident of foreign territory, was found concealed with three companions (who were Jowaki Afridis), all armed to the teeth, in a deserted house in Surgul, Kohat district.

Aki Afridis), all armed to the teeth, in a des

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Some Government camels were grazing in the village, and the theory for the prosecution was that S A and the other accused came down to steal these camels, or such other property as they might be able to lay hand upon. The Deputy Commissioner convicted all the accused under ss. 109 and 382, and the Commissioner, to whom the proceedings went up for confirmation, altered the conviction to one under s. 393. Held (by a majority of the Court, Elsmie, J., dissenting), that the conviction could not be sustained. Per Smyth, J.—The mere assembling of a number of persons together with a general intention of committing theft, and not for the purpose of committing a specific theft or theft of specific property. cannot be considered to amount to the abetment of an offence of theft, so as to be punishable under ss. 116 and 379, or, as in the present case, under ss. 116 and 382. There must be some design to commit a specific offence before a person can be held guilty of abetment of such offence by having conspired with others to commit it. Per Elsmie, J., contra-That the case clearly came within the meaning of the 2nd clause of s. 107, and that the conviction was sustainable. Per Plowden, J.—On a charge of abetment of consumacy, it is necessary to prove, and it ought therefore to be alleged, not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an offence (specify the offence), but also that some act or illegal omission (specify the particular act or omission) took place in pursuance of that conspiracy, and in a der to the commission of the said offence. That in this case the facts alleged were not proved with suffcient certainty to justify a conviction; as it could not be said positively that the purpose of the accused was theft, or that they came into British territory in pursuance of a conspiracy to commit theft there. Held further (per Plowden, J.).—That a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft), as opportunity should offer, within a determinate area (as, for instance, a village), would not be bad as being too vague.—SHER ALI v. EMPRESS, Panj. Rec., No. 18 of 1879.

Where an accused person, who had been previously convicted of theft under s. 379, was sentenced to whipping in addition to imprisonment upon a subsequent conviction of house-breaking by night with intent to commit theft under s. 457, and it appeared that theft was distinctly charged in the formal charges prepared by the Code, though s. 457 alone was cited, and it was found that the theft was completed, held by the Full Beach that the omission to formally charge the accused with, and convict film of, theft, under s. 379 or s. 380, was not a ground for setting aside the sentence of whipping on the revision side of the Court, such omission not having in any way prejudiced the accused in his defence.—Empress v. Radha, Panj. Rec., No. 14 of 1880.

A HINDU, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return, to his family, he lived in commensality with it, but he did not treat such property as joint family-property, but as his own property. Held that such property was his sole property, and his brother was not a joint owner of it, and could properly be convicted in respect of theft of it. It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property.—Empress v. Sita Ram Rai, I. L. R., 2 All. 181. [Straight, J. Aug. 16, 1880.]

PRRSONS removing property under the provisions of the rent-law relating to distraint ought not to be proceeded against under the criminal law, but the parties aggreeved by a wrongful distraint should have recourse to the remedy provided by Act VIII. of 1869 (B.C.).—Sheikh Aghani v. Bhagi Halwai, 8 C. L. R. 204. [Pontifex and Field, J]. Mar. 9, 1881.]

Where the plaintiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond (which tended to show that defendant had paid more than it was alleged had been paid by him) snatched up the bond which was lying beside the arbitrator, ran away, and refused to produce it, held that the offence committed was not theft, but secreting a document under s. 204 of the Penal Code.—Subramania Ghanapati v. Reg., I. L. R., 3 Mad. 261. [Turner, C.J., and Muttasami Ayyar, J. Sep. 2, 1881.]

A SWAMP, the property of Government, having been surrounded with police-guards by Government to prevent salt being removed, held that the taking against the will of Government, and with the intention of obtaining an unlawful gain of salt which had been

spontaneously produced on the swamp, was theft.—Reg. v TAMMA GHANTAYA, I. L. R., 4 Mad. 228. [Turfer, C.J., and Kernan, J. Oct. 19, 1881.]

THE wrongful taking of fish from a creek is not theft.—Reg. v. Revu Pothadu, I. L. R., 5 Mad. 390. [Muttusami Ayyar and Tarrant, JJ. Aug. 5, 1882.]

WHERE property is in the joint-possession of two persons, as joint-owners, and one of them dishonestly removes it from the possession of the other, the removal constitutes them.—VIRAMKUTTI & CHIYAMU, I. L. R., 7 Mad. 557. [Turner, C.J., and Hutchins, J. Aug. 14, 1884.]

To constitute theft it is sufficient if property is removed, against his wish, from the tasked of a person who has an apparent title, or even a colour of right, to such property. — QUEEN-EMPRESS v. GUNGARAM SANARAM, I. L. R., 9 Bom. 135. [West and Scott, J]. Oct. 29, 1884.]

WHERE the accused were found fishing without permission in an enclosed tank belonging to the municipality of the town of Sirsi, it was held that they could be convicted of their, as the tank from which the fish were taken was apparently an enclosed tank, and the fish were, therefore, restrained of their natural liberty, and liable to be taken at any time according to the pleasure of the owner, and were, therefore, subjects of theft.—
QUERIS-EMPRESS v. SHAIKH ADAM valad SHAIK FARID, I. L. R., 10 Bom. 193. [Birdwood and Jardine,]]. Jan. 8, 1886.]

THEFT of joint property may be committed by a co-parcener if he takes it from jointpossession, and converts such possession into separate possession. This was a case referred for the orders of the High Court under s. 438 of the Code of Criminal Procedure
(Act X. of 1882), by the District Magistrate. The case was stated as follows: "P, the
accused, a boy of 18, took a cart from his father's mandi, or shop, without his father's
knowledge, and sold it, and appropriated the proceeds. He admitted all this, but pleaded,
first, that he was unvivided from his father, and was a joint-owner of the cart; and, secondity, that the reason he took the cart was that his father, who was married a second
time, does not support either him or his mother. He kept, he said, part of the proceeds,
for his own support, and sent the rest to his mother. The Second-class Magistrate took
the accused person's word for all these allegations, and found: 'He seems to have acted
under a bond-fide claim of right,' and discharged him." Judgment of High Court: "The
Second-class Magistrate's judgment and order are wrong. Theft of joint property of a
family may be committed by one of the family, though a co-parcener, if he takes it from
Dint possession into separate possession. See Weir's Criminal Rulings, p. 154, on s. 379,
Penal Code. The acquittal is set aside, and the Magistrate is directed to re-try the case,
and to have regard to the definition of theft in s. 378, Penal Code, and of the word, 'dishonestly' in s. 24."—Queen-Empress v. Ponnuranjan, I. L. R., 10 Mad. 186. [Kernan
and Muttusami Ayyar, JJ. Mar. 1, 1887.]

A DUG up and immediately carried away, without any authority or right, several cartlods of earth, part of unassessed lands of a village. Held that A was not guilty of theft. QUEEN-EMPRESS v. KOTAYYA, I. L. R., 10 Mad. 255. [Collins, C.J., and Kernan and Brandt, JJ. Mar. 18, 1887.]

A PERSON who has been convicted of the offence of theft (an offence punishable under ch. 17 of the Penal Code) does not, on being convicted of an attempt to commit the offence of theft, become liable to the enhanced punishment allowed by s. 75 of the Penal Code.—
PUREN-EMPRESS v. SRICHARAN BAURI, I. L. R., 14 Cal. 357. [Petheram, C.J., and Cunningham, J. Mar. 19, 1887.]

UNDER 88. 35 and 235 of the Criminal Procedure Code, a Magistrate may legally pass a separate sentence of two years' rigorous imprisonment and fine under each of the 88. 379 or 380 and 454 of the Penal Code for house-breaking in order to the commission of theft—and theft, the two offences forming part of the same transaction, and being tried together. In such a case, where the prisoner had been three times previously convicted, held that the better course would have been to commit him to the Court of Session under ss. 454-75 of the Code. But a Sessions Judge trying such a case under s 379 or s. 380 and s. 454 would, under no circumstances, be justified in passing a sentence of ten years' imprisonment under the latter part of s. 444, and of four years' imprisonment under s. 380. The latter portions of ss. 454 and 457 were framed to include the cases of house-trespassers and house-breakers who had not only intended to commit, but had actually committed theft. Queen-Empress v. Ajudhia (I. L. R., 2 All. 644) and Queen-Empress v. Sakharam

See you be her some the his wife in

Bhau (l. L. R., 10 Bom. 493) referred to.—Queen-Empress v. Zor Singh, l. L. R., 10 All. 446. [Straight and Brodhurst, JJ. Dec. 16, 1887.]

ACCUSED were charged with having taken fish from a tank belonging to the complainant, and convicted of theft and criminal trespass under ss. 379 and 447 of the Penal Code. It was found that the tank in question was not enclosed on all sides, and was dependent on the greflow of a neighbouring channel which was connected with flowing streams for its supply of fish; that the fish were not reared and preserved in the tank, and that the occurrence complained of took place at a time when the floods were high, and the tank was connected with the streams, so that the fish could leave it at pleasure. Held that the fish were fere nature, and not in "the possession of" the complainant, and consequently no offence had been committed. Held further that, had the fish been taken at a time when they were restrained of their natural liberty, and were liable to be taken at the pleasure of the owner of the tank, the conviction would have been upheld. The Meherpore case of 1887 (I. L. R., 15 Cal. 390) distinguished.—MAYA RAM SURMA v. NICHALA KATANI, I. L. R., 15 Gal. 402 [Norris and Ghose, J]. Jan. 24, 1888.]

Whenever any person causes a police-officer to arrest another person in a presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit. In such cases, if more persons than one are arrested or complained against, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit. All compensation awarded under this section may be recovered as it it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term, not exceeding thirty days, as the Magistrate directs, unless such sum is sooner paid.—Crim. Pro. Code (Act X. of 1882), s. 552.

The accused, being in the employ of Government in the Post office Department, while assisting in the sorting of letters, secreted two letters with the intention of handing them to the delivery-peon, and sharing with him certain moneys payable upon them. He was charged under the Post-office Act, s. 48. Held (1) that since the intention of the accused was not to prevent the delivery of the letters to the addressees, he was not guilty of the offence of secreting them within the meaning of that section; (2) that he was guilty of the offence of stealing and of fraudulently misappropriating the letters within the meaning of that section, and of the offence of theft and of attempt to commit dishonest misappropriation of property within the meaning of the Penal Code.—Queen-Empress v. Venkatasami, I. L. R., 14 Mad. 229. [Collins, C J., and Weir, J. Oct. 17, Nov. 13, 1890.]

CERTAIN crops which had been distrained for arrears of revenue were harvested and removed by the owners and occupiers of the land, who were thereupon charged with theft. The accused were not the defaulters, the demand having been made upon certain other persons in whose name the pattas stood as the registered proprietors. The accused were acquitted. Held that the acquittal was wrong in the absence of a finding whether or not the accused were aware of the distraint, and dishonestly removed the crops with such knowledge.—Queen-Empress v. Ramasami, I. L. R., 16 Mad. 364. [Muttusami Ayyar and Parker, J]. Nov. 30, 1892.]

Any Mag. Cognizable. Warrant. Not bailable. Not comp.

Theft in dwelling-house, ing, tent, or vessel, which builds ing, tent, or vessel, is used as a human dwelling, or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A PRISONER may be convicted of theft in a building and of house-breaking by night with intent to commit theft, though, if the Judge considers the punishment for the first of fence sufficient, he need not award any additional sentence for the second.—QUEEN TINCOWREE, W. R., Sp., 31. [Jackson, J. May 11, 1864.]

THEFT, by constables of property from the house they were employed to guard, is punishable under s. 380, and not s. 409.—QUEEN v. BOIDONATH SINGH, 3 W. R. 29. [Jackson and Glover, JJ. June 17, 1865.]

In this case, the proper (378] her entrod Hence theft committed

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CHAP. XVII.

THE prisoner was convicted by the Magistrate of two separate offences under ss. 456 and 380 of the Penal Code, and sentenced for both. On appeal, the Sessions Judge, helding that the offence proved was under s. 457, ordered a new trial for offences under ss. 457 and 380. Held that there ought not to be a new trial, but that the conviction and sentence under s. 310 should be set aside - QUEEN v. RAMCHARAN KAIRI, B. L. R., Sup. Vol., 488; 6 W. R. 39. [Peacock, C.]., and Norman, Kemp, Seton-Karr, and Campbell, JJ. July 9, 1866.]

A CATTLE-SHED has been held to be "a building used for the custody of property."—Mad. H. C. R.; Nov? 24, 1866.

A HIRED boatman does not come within the definition of a clerk or servant under s. 381 of the Penal Code. Theft by such a person on board a boat comes under s. 380.—QUEEN v. BAWOOL MANNER, 8 W. R. 32. [Kemp and Glover, J]. July 2, 1867.]

A DEPUTY MAGISTRATE has no power to convict of theft (s. 380, Penal Code) where the offence charged is lurking house-trespass by night, with aggravating circumstances (ss. 458, 459, Fenal Code), but must commit on the latter charge.—Puran Teler v. Bhuttoo Dome, 9 W. B. 5. [Kemp and Jackson, JJ. Jan. 13, 1869.]

WHERE the accused stole property at night belonging to two different persons from the same room of a house, it was held that he could not be sentenced separately as for two differences of theft.—QUEEN v. SHEIK MONEEAH, II W. R. 38. Loch and Jackson, JJ.

A PRISONER convicted of "theft in a dwelling-house," who has previously been convicted of "simple theft," is not thereby rendered liable to whipping under Act VI. of 1864, s. 3.—Reg. v. Changla valad Shumia, 7 Bom. H. C. R. 68. [Westropp, C.J., and Gibbs and Lloyd, JJ. Sep. 22, 1870.]

THE Magistrate convicted the accused under s. 380 of the Penal Code, and a previous conviction having been proved under s. 379 of the Penal Code, sentence of imprisonments and whipping was passed. Held that, in order to justify the sentence of whipping, the previous conviction should have been in respect of the same specific offence.—PRO., Oct. 28, 1870, 5 Mad. H. C. R., Ap., 38.

ON a conviction for theft in a dwelling, under s. 380 of the Penal Code, fine cannot be substituted in Vieu of imprisonment, though it may be added to imprisonment.—Sheikh Dulloo v. Zainah Bebee, 16 W. R. 17. [Kemp and Glover, JJ. July 1, 1871.]

ALL that is necessary in order to constitute the offence of theft in a building is that the property should be under the protection of the building. It is not necessary to show unlawful entrance into the building.—QUEEN v. ISHREE PERSHAD, 24 W. R. 49. [Markby and McDonell, JJ. Aug. 23, 1875]

S. 380, which makes it an offence punishable with seven years' imprisonment to commit theft in any building, &c., used as a human dwelling or for the custody of property, is intended to give greater security only to property deposited in a house, so as to be under the protection of the house, and not to property about the person of the party from whom it is stolen. Theft from a person in a dwelling-house is, therefore, simple theft under 370.—Tandri Ram v. Crown, Panj. Rec., No. 14 of 1876.

ACCUSED, with intent to commit theft, entered at night a dalan, or entrance-hall, surrounded by a wall in which there were two door-ways, but without doors, which was used for the custody of property. Held that the dalan was a building within the meaning of ss. 380 and 442, and that a conviction under s. 457 was therefore maintainable.—Dad v. Crown, Pahj. Rec., No. 10 of 1879.

Held that, where, in the course of one and the same transaction, an accused person appears to have committed several acts, directed to one end and object, which together amount to a more serious offence than each of them taken individually by itself would constitute, although for purposes of trial it may be convenient to vary the form of charge, and to designate, not only the principal, but the subsidiary crimes alleged to have been committed, yet, in the interests of simplicity and convenience, it is best to concentrate the conviction and sentence on the gravest offence proved. Where, therefore, a person who broke into a house by night, and committed theft therein, was charged and tried for offences under is, 380 and 457 of the Penal Code, and was convicted of both those offences, and punished for each with rigorous imprisonment for eighteen months, the Court convicted him of the offence under s. 457, and sentenced him to rigorous imprisonment for three years, and acquitted him of the offence under s. 380.—Empress v. Ajudhia. I. L. R., 2 All. 644. Straight, J. Jan. 19. 1880.

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THE accused was convicted at one trial by a Magistrate of the first class of the offences of house-breaking by night with intent to commit theft, punishable under s. 457, and of theft in a dwelling-house, punishable under s. 380 of the Penal Code (Act XLV. of 1860), the two offences being part of the same transaction, the theft following the bouse-breaking. The prisoner was sentenced to two years' rigorous imprisonment under s. 457, and to six months' rigorous imprisonment and a fine of Rs. 100, or, in default of parment, three months' further rigorous imprisonment under s. 380. The District Magistrate referred the case to the High Court, on the ground that the aggregate of punishment awarded on the two heads of charge exceeded the powers of the First class Magistrate who tried the case. The Sessions Judge, to whom an appeal had been preferred, was of the same opinion, and reduced the sentence to two years' rigorous imprisonment. Held that, as the accused committed two distinct offences which did not "constitute, when combined, a different offence" punishable under any section of the Penal Code (A& XLV. of 1860), s. 71 of the Code did not apply, and, as the aggregate punishment did not exceed twice the amount of punishment which the trying Magistrate was competent to inflict, the sentences were legal under s. 35 of the Criminal Procedure Code (Act X. of 1882). Per Jardine, J.—The rules for assessment of punishment, contained in s. 454 of the Criminal Procedure Code of 1872, having been omitted in s. 235 of the Criminal Procedure Code of 1882 must, now be sought for in s. 71 of the Penal Code (Act XLV. of 1860) and in s. 35 of the Criminal Procedure Code (Act X. of 1882).—Queen-Empress v. Shakharam Bhau, I. L. R., 10 Bom. 493. [Birdwood and Jardine, JJ. Feb. 1886.]

UNDER ss. 35 and 235 of the Criminal Procedure Code, a Magistrate may legally pass a separate sentence of two years' rigorous imprisonment and fine under each of the ss. 379 or 380 and 454 of the Penal Code for house-breaking in order to the commission of theth and theft, the two offences forming part of the same transaction, and being tried together. In such a case, where the prisoner had been three times previously convicted, held that the better course would have been to commit him to the Court of Session under ss. 454-75 of the Code. But a Sessions Judge trying such a case under s. 379 or s. 380 and s. 454-would, under no circumstances, be justified in passing a sentence of ten years' imprisonment under the latter part of s. 454, and of four years' imprisonment under s. 380. Phe latter portions of ss. 454 and 457 were framed to include the cases of house trespassers, and house-breakers who had not only intended to commit, but had actually committed theft. Queen-Empress v. Ajudhia (I. L. R., 2 All. 644) and Queen-Empress v. Sakharam Bhau (I. L. R., 10 Bom. 403) referred to.—Queen-Empress v. Zor Singh, I. L. R., 10 All. 146. [Straight and Prodhurst, JJ. Dec. 16, 1887.]

WHERE the accused stole a piece of cloth spread out to dry on the top of a house, to which he got access by scaling a wall, it was held that he had not committed theft in a building, but simple theft. The fact that the roof was used for domestic purposes makes no difference.—1 Mad. Jur. 282.

A COURT has no power under s. 395 of the Criminal Procedure Code to revise its sentence of whipping by inflicting a fine. In cases where the sentence of whipping cannot be carried out, all that the Court can do is either to remit the whipping altogether, or to sentence the offender, in lieu of such whipping or of so much of the sentence of whipping as was not carried out, to imprisonment, &c. The word "imprisonment," in s. 395 of the Criminal Procedure Code means a substantive sentence of imprisonment and not imprisonment for default in payment of a fine.—QUERN-EMPRESS v. SHEODIN, I. L. R., 11 All. 308. [Straight, J. Jan. 5, 1889.]

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

881. Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any Theft, by clerk or servant, of property in possession of property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be hable to fine.

A HIRED boatman does not come within the definition of a clerk or servant under s. 381 of the Penal Code. Theft by such a person on board a boat comes under s. 380.

—QUEEN v. BAWOOL MANJEE, 8 W. R. 32. [Kemp and Glover, J]. June 2, 1867.]

THE prisoners were charged with having stolen a sum of money shut up in a box, and placed in the police treasury buildings, over which they, as barkandazes, were placed in

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mard. Held that the charge should have been made under s. 381 (theft by a servant in 9 perion of property), and not under s. 409 (criminal breach of trust by a public ser-i).—QUEEN V. JUGGURNATH SING, 2 W. R. 55. [Seton-Karr, Jackson, and Glover, []. April 3, 1897.]

THE civil station at Raikot is not part of British India within the meaning of Stat. 21 and 22 Vic., c. 106. Where the accused, a subject of a Native State, committed wheft at Rajkot Civil Station, and was found in possession of the stolen property at Thana, held that, as the offerce was not committed in British India, and as the accused was the subject of a Native State, the Sessions Court at Thana had no jurisdiction to try the accused for theft under s. 381 of the Penal Code. But it was competent to try him for dishonest retention of stolen property under s. 410 of the Penal Code as amended by Act VIII. of 1882.—QUEEN-EMPRESS v. ABDUL LATIB valad ABDUL RAHIMAN, I. L. R, 10 Bom. 186. [Birdwood and Jardine, J]. Nov. 24, 1885.]

882. Whoever commits theft, having made preparation for causing death, Ct. of Ses. or hurt, or restraint, or fear of death, or of hurt, or Warrant. Theit after preparation of restraint, to any person, in order to the committing Not bailable. made for causing death or hurt in order to the commitof such theft, or in order to the effecting of his escape Not comp. ting of the theft. after the committing of such theft, or in order to the

retaining of property taken by such thest, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(a.) A commits theft on property in Z's possession; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of burting Z in case Z should resist. A has committed the offence defined in this section.

• (6.) A packs Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing, and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

Rulings.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 382 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

An omission to give information that a crime has been committed does not, under s. 107 of the Penal Code, amount to abetment, unless such omission involves a breach of a legal obligation. A private individual is not bound by any law to give information of any offeace which he has seen committed.—QUEEN v. KHADIM SHEIKH, 4 B. L. R., A. Cr., 7. Loch and Glover, JJ. Nov. 23, 1869]

S A, a resident of foreign territory, was found concealed with three companions (who were Jowaki Afridis), all armed to the teeth, in a deserted house in Surgul, Kohat district. Some Government camels were grazing in the village, and the theory for the prosecution was that S A and the other accused came down to steal these camels, or such other pro-perty as they might be able to lay hand upon. The Deputy Commissioner convicted all the accused under ss. 109 and 382, and the Commissioner, to whom the proceedings went up for confirmation, altered the conviction to one under s. 393. Held (by a majority of the Court, Elsmie, J., dissenting) that the conviction could not be sustained. Per Smyth, J.—The mere assembling of a number of persons together with a general intention of committing theft, and not for the purpose of committing a specific theft or their of specific property, cannot be sonsidered to amount to the abetment of an offence of theft, so as to be punishable under ss. 116 and 379, or, as in the present case, under ss. 116 and 382. There must be some design to commit a specific offence before a person can be held guilty of abetment of such offence by having conspired with others to commit it. Per Elsmie, J., contra. **-That the** case clearly came within the meaning of the 2nd clause of s. 107, and that the conviction was sustainable. Per Plowden, J .- On a charge of abetment of conspiracy, it is necessary to prove, and it ought, therefore, to be alleged, not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an

offence (specify the offence), but also that some act or illegal omission (specify the particular act or omission) took place in pursuance of that conspiracy, and inforder to the commission of the said offence. That in this case the facts alleged were not proved with sufficient certainty to justify a conviction, as it could not be said positively that the purpose of the accused was theft, or that they came into British territory in pursuance of a conspiracy to commit theft there. Held further (per Plowden, J.) .- That a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft), as opportunity should offer, within a determinate area (as, for instance, a village), would not be bad as being too vague.—Sher Ali v. Empress, Panj. Rec., No. 18 of 1879.

CHARGE.

, committed theft, having That you, on or about the day of made preparation for causing death to a person in order to the committing of such their, and thereby committed an offence punishable under s. 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

, committed theft, baving That you, on or about the day of made preparation for causing restraint to a person in order to the effecting of your excapafter the committing of such thefr, and thereby committed an offence funishable under s. 382 of the Indian Penal Code, and within the cognizance of the Court of Session [ar High Court].

, committed theft, having That you, on or about the day of made preparation far causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under s. 382 of the ladian Penal Code, and within the cognizance of the Court of Session [or High Court].—Crim. Pro. Code (Act X. of :882), Sch. V., Form XXVIII. (II.).

cf. 5.503

OF EXTORTION.

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear so deliver to any person any property or valuable security, or anything signed or sealed, which

may be converted into a valuable security, commits "extortion."

Illustrations.

- (a.) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.
- (b.) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.
- (c.) A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.
- (d.) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion

Rulings.

THE making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, is extortion within the meaning of s. 384 of the Penal Code.—MEER ABBAS ALI D. OMED ALI, 18 W. R. 17. [Kemp and Glover, JJ. June 17, 1872.]

WHERE more than one offence is proved in respect of which the accused has been charged and tried, a conviction for each such offence must follow, whether s. 71 of the Penal Code applies to the case or not; and subject to the previsions of s. 71, a separate sentence must be passed in respect of each such conviction. Under s. 35 of the Criminal Procedure Code, sentences of imprisonment cannot be passed so as to run concurrently. In a trial for offences under security and 383 of the Penal Code, committed in the same

transaction, it appeared that, but for personating a public servant, the accused would not have been in a position to commit the act of extortion complained of. Held that the first and second paragraphs of s. 71 of the Penal Code did not apply to the case; that the third paragraph also die not apply, because the words "constitute an offence" refer to the definitions of offences contained in the Code, irrespective of the evidence whereby the acts complained of are proved, and personating a public servant as defined in s. 170 was not a constituent element of extortion as defined in s. 383; that in the present case the former offence was completed before the latter hall begun; and that separate sentences for each offence were, therefore, not illegal.—QUEEN-EMPRESS v. WAZIR JAN, I. L. R., 10 All. 58. [Mahmood, J. Sep. 16, 1887.]

884. Whoever commits extortion shall be punished with imprisonment of Ct. of Ses., either description for a term which may extend to three Presy. Mag., or Mag. of 1st Punishment for extortion. years, or with fine, or with both.

To amount to the offence of extortion, property must be obtained by intentionally Warrant, putting a person in fear of injury, and thereby dishonestly inducing him to part with his Bailable. property. The mere issue of hukumnama (to collect statistical information) by a police- Not comp. officer is no legal ground for a conviction of abetment of cheeting or of extortion. QUEEN v. MEAJAN, 4 W. R. 5. [Kemp and Seton-Karr, J]. Sep. 9, 1865.

A CHAUKIDAR who obtains money from another person, either by fraudulent inducement or dishonesty, or by putting that person in fear of injury, is punishable under s. 417 of the Penal Code for cheating, or under ss. 383 and 384 for extortion, but not for criminal misappropriation of public money entrusted to him as a public servant. - QUEEN v. RAMNARAIN CHAUKIDAR, 3 W. R. 32. [Loch and Seton-Karr,]]. Sep. 18, 1865.]

UNDER s. 384, delivery of the property by the person put in fear is the essence of the Where there is no delivery, but the person intimidated passively allows his property to be taken away, the offence is not extortion, but would be robbery, if the threats used came within the meaning of s. 390.—QUEEN v. DULEBLOODDEEN SHEIKH, 5 W. R. 19; I Wyman's Rev., Civ., and Crim. Rep. 20. [Macpherson, J. Jan. 30, 1866.]

WHERE a constable and others enter a house, and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others. -- GOVT. v. MAHOMED HOSSEIN, 5 [Norman and Campbell, JJ. Mar. 5, 1866.]

IT is not necessary, in a case of extortion under the Penal Code, that the threat should be used, and the property received, by one and the same individual, nor that the receiver should be charged with abetment, although that might be done.—Reg. v. Shankar Bhagham 2 Bom. H. C. R. 394. [Couch. C.J., and Warden, J. July 12, 1866.]

A conviction of extortion by a Full-power Magistrate, and an order of a Sessions Judge rejecting an appeal therein, reversed by the High Court, as there was no such fear of injury as is contemplated by s. 383 of the Penal Code. nor was the delivery of money by the complainants thereby induced, nor did it appear from the evidence that the money was obtained dishonestly by the prisoner, who might have demanded it, believing in good faith that he was entitled to it.—Reg. v. Abdul Kadir valad Bala Abuje, 3 Bom. H. C. R. 45. [Gouch, C.J., and Warden, J. Oct. 31, 1866.]

WHERE accused extorted money by threatening to bring a criminal charge, it was held that he had committed extortion, whether the charge which he threatened to brifig was true or false. The terror of a criminal charge is a fear of injury within the meaning of those words in s. 383 of the Penal Code. Extortion may be equally committed whether the charge threatened is true or false.—Queen v. Muearruk, 7 W. R. 28; 3 Wyman's Rev., Civ., and Crimiskep. 19. [Norman and Seton-Karr, JJ. Feb. 4, 1867.]

WHERE a complainant charged a person, who was one of the public servants mentioned in s. 167 of Act XXV. of 1861 (corresponding with s. 197 of Act X. of 1882) with committing acts which, if committed by a private individual, would have constituted the offence of extortion, it was held that it was not illegal to treat the charge as one of extortion, and to proceed to trial without sanction for the prosecution.—REG. v. PARSHRAM KESHAV, 7 Bom. H. C. R. 61. [Gibbs and Melvill, J]. July 28, 1870.]

or 2nd class. Uncog.

ecs. 385-389.]

THE making use of real or supposed influence to obtain money from a person against. his will under threat, in case of refusal, of loss of appointment, is extortion within the meaning of s. 384 of the Penal Code.—Meer Abbas Ali v. Omed Ali, 18 W. R. 17. [Kemp and Glover, J]. June 17, 1872.]

THE mere fact that the offence of extortion under s. 384 of the Penal Code is committed in the presence of the village-chaukidar, without eliciting any disapproval on his part, will not render him liable as an abettor of the offence.—IN THE MATTER OF GOPAL Chunder Sirdar: Gopal Chunder Sirdar v. Foolmoni Bewa, I. L. R., 8 Cal. 728; 11 C. L. R. 223. [McDonell and Field, JJ. April 20, 1882.]

THE mere going about and collecting money, upon an assertion that an order had issued to tax the persons upon whom the demand was made, is not extortion, but chesting. -5 Rev., Jud., and Pol. Jour. 147.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable.

Putting person in fear of injury in order to commit extortion.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.

Not comp.

Extortion by putting a person in fear of death or grievous hurt.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

Putting person in fear of death or of grievous hurt, in order to commit extortion.

387. Whoever, in order to the committing of extortion, puts, or attempts to put, any person in fear of death or of grieveus hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The feigning of an attempt to commit suicide in order to extort money is an offence under s. 387 of the Penal Code.—REG. v. GUZORY, I Ind. Jur, N. S., 423. [Peacock, C.]. and Phear and Macpherson, JJ. Sep. 8, 1866.]

Ditto.

Extortion by threat of accusation of an offence punishable with death or transportation, &c.

888. Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with transportation for life or with imprisonment for a term which may extend to

ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisopment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with transportaion for life.

> ly this section the word "offence" denotes a thing punishable under this Code or under any special or local law as defined in this Code.—S. 40, Penal Code.

> THE terror of a criminal charge is a fear of injury within the meaning of those words in s. 383 of the Penal Code. Extortion under ss. 388 and 380 may be equally committed whether the charge threatened be true or false. Susen v. Mesarruk, 7 W. R. 28. [Norman and Seton-Karr,]]. Feb. 4, 1867.]

Ditto.

389. Whoever, in order to the committing of extortion, puts, or attempts to put, any person in fear of an accusation against Putting person in fear of accusation of offence, in order to that person or any other, of having committed, or commit extortion. attempted to commit, an offence punishable with

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The terror of a criminal charge is a fear of injury within the meaning of those words in s. 383 of the Penal Code. Extortion under ss. 388 and 389 may be equally committed whether the charge threatened be true or false.—Queen v. Mobarruk, 7 W. R. 28. [Norman and Seton-Karr, JJ. Feb. 4, 1867.]

OF ROBBERY AND DACOITY.

Theft is "robbery," if, in order to the committing of the theft, or in com-

Extortion is "robbery," if the offender, at the time of committing the ex-•When extortion is robbery. tortion, is in the presence of the person put in fear,

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant

fear of instant death, of instant hurt, or of instant wrongful restraint to that 5-239

offender, for that end, voluntarily causes or attempts to cause to any person

person, or to some other person, and, by so putting in fear, induces the person

Illustrations. (a.) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b.) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A bas therefore committed robbery.

(c.) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the

(d.) A obtains property from Z by saying: "Your child is in the hand of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such: but it is not robbery, unless Z is put in fear of the instant death of his child.

891. When five or more persons conjointly commit or attempt to commit

attempt to commit robbery = committing robbery = Dacoite

robbery, and persons present and aiding such commission or attempt amount to five or more, every person so committing, attempting, or aiding, is said to

[385] A person is, Sais blance an effect voluntaril. 50.] by misano where by he intended to cause it of they men

so put in fear then and there to deliver up the thing extorted.

child who is there present. A has therefore committed robbery on Z.

CHAP. XVII.]

ished with transportation for life.

or of instant wrongful restraint.

wrongful restraint.

commit " dacoity."

390. In all robbery there is either theft or ex-

mitting the theft, or in carrying away, or attempting

and commits the extortion by putting that person in

a robbery, or where the whole number of persons conjointly committing or attempting to commit a

SECS. 390, 3

death or with transportation for life, or with imprisonment for a term which

may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

and, if the offence be punishable under section 377 of this Code, may be pun-

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

OFFENCES AGAINST PROPERTY.

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The definition of dacoity in the Penal Code is so wide as to extend to what would have been treated as cases of plunder under the old law.—QUEEN v. MEHOYRAT ALLY BEG, 3 W. R. 60. [Kemp and Seton-Karr, JJ. Aug. 8, 1865.]

Where several Hindus acting in concert forcibly removed an ox and two cows from the possession of a Mahomedan, not for the purpose of causing "wrongful gain" to themselves, or "wrongful loss" to the owner of the cattle, but for the purpose of preventing the killing of the cows. held that they could not properly be convicted of dacoity, but only of riot.—Queen-Empress v. Raghunath Rai, I. L. R., 15 All. 22. [Tyrrell, J. Aug. 6, 1892.]

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp. Punishment for robbery.

Punishment for robbery.

Punishment for robbery.

Punishment for robbery.

Punishment for robbery.

Be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

CHARGE.—That you, on or about the day of , at ••, robbed [state the name], and thereby committed an offence punishable under s. 392 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXVIII. (II.).

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 392 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s.44

A PERSON convicted of robbery or their cannot be also convicted of dishonestly receiving in respect of the same property.—QUEEN v. Sheik Muddwi Ally, i W. R. 27. [Kemp and Glover, JJ. Nov. 23, 1864.]

When stolen property is found in the possession of dacoits, the offence of "knowingly having in possession" is to be considered as included in the original encofdacoity, unless there are circumstances clearly separating the one crime from the other, e.g., length of time or distance.—Queen v. Abbool Hossein, i W. R. 48. [Kemp and Glover, J]. Dec. 22, 1864.]

In a trial for robbery, it is competent to the jury, if they disbelieve the evidence as to the assault (i. e., as to the circumstances of aggravation), to bring in a verdict of guilty of theft.—QUEEN v. SAKHAUT SHEIKH, 2 W. R. 13. [Kemp and Glover, J] Jan. 23, 1865.]

THEFT with violence is robbery. A conviction under s. 397 of the Penal Code of using a deadly weapon whist engaged in the commission of robbery or dacoity is equally good, whether the number of thieves be five or under.—Queen v. Dwarka Ahker, 2 W. R. 49. [Glover,]. Mar. 21, 1865.]

When persons are found within six hours of the commission of a dacoity with portions of the plundered property in their possession, the presumption of law is that they are participators in the dacoity, and not merely receivers.—Quben v. Cassy Mul, 3 W. R. 10. [Glover, J. May 6, 1865.]

Where a person, through fear, &c., offers no resistance to the carrying-off of his property, but does not deliver any of the property to those who carry it off, the offence committed is robbery, and not extortion.—Queen v. Duleelooddeen Sheikh, 5 W. R. 19. [Macpherson, J. Jan. 30, 1866.]

THE offence is robbery where, in committing theft, there is indubitably an intention, seconded by an attempt, to cause hurt.—Queen v. Teekai Bheer, 5 W. R. 95. [Jackson and Glover,]].—May 28, 1266.]

A SENTENCE of fine only is illegal in a case of dacoity.—QUEEN v. BHOJA, 6 W. R. 54. [Norman and Seton-Karr,]]. Aug. 13, 1866.]

Where persons are committed on three separate and distinct charges for three separate and distinct robberies committed on the same night in three different houses, they must be tried separately on each of the three charges. Remarks on the irregularities in the investigation of the present case.—Queen v. Itwarfe Dome, 6 W. R. 8. [Loch and Markby, JJ. Oct. 20, 1866.]

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OFFENCES AGAINST, PROPERTY.

[Secs. 393, 267.

By the infliction of grievous hurt, theft becomes robbery, and all parties concerned in the offence are liable to punishment. — QUEEN v. HUSHRUT SHEIKH, 6 W. R. 85. [book, Nov. 27. 1866.]

898: Whoever attempts to commit robbery shall be punished with rigor- Ct. of Ses., ous imprisonment for a term which may extend to Presy. Mag., or Mag. of 1st Attempt to commit robbery. seven years, and shall also be liable to fine.

class

EVERY person, whether within or without the Presidency-towns, aware of the comCognizable.

mission of or of the intention of any other person to commit, any offence punishable Warrant.

Not bailable. under s. 393 of the Penal Code, shall forthwith give information to the nearest Magis-Not comp. trate or police of such commission or intention.—Crim Pro. Code (Act X. of 1882), s. 44.

THE two offences of robbery and of voluntarily causing hurt, when combined, are punishable under s. 304 alone, and not under ss. 392 and 394.—QUERN v. MOOTKEE KORA, 2 W. R. 1. [Kemp and Glover, JJ. Jan. 2, 1865.]

S A, a resident of foreign territory, was found concealed with three companions (who were lowaki At fdis), all armed to the teeth, in a deserted house in Surgul, Kohat district. Some Government camels were grazing in the village, and the theory for the prosecution was that S A and the other accused came down to steal these camels or such other property as they might be able to lay hand upon. The Deputy Commissioner convicted all the accused under ss. 109 and 382, and the Commissioner, to whom the proceedings went up for confirmation, altered the conviction to one under s. 393. *Held* (by a majority of the Court, Elsmie, J., dissenting) that the conviction could not be sustained. *Per Smyth*, .-The mere assembling of a number of persons together with a general intention of committing theft, and not for the purpose of committing a specific theft or theft of specific property, cannot be considered to amount to the abetment of an offence of theft, so as to be punishable under ss. 116 and 379, or, as in the present case, under ss. 116 and 382. There must be some design to commit a specific offence before a person can be held guilty of abetment of such offence by having conspired with others to commit it. Per Elsmie, J., contra.—That the case clearly came within the meaning of the 2nd clause of s. 107, and that the conviction was sustainable. Per Plowden, J.—On a charge of abetment of conspiracy, it is necessary to prove, and it ought therefore to be alleged, not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an offence (specify the offence), but also that some act or illegal omission (specify the particular act or omission) took place in pursuance of that conspiracy, and in order to the commission of the said offence. That, in this case, the facts alleged were not proved with sufficient certainty to justify a conviction, as it could not be said positively that the purpose of the accused was theft, or that they came into British territory in pursuance of a conspiracy to commit theft there. Held further (per Plowden, J.).—That a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft), as opportunity should offer, within a determinate area (as, for instance, a village), would not be bad as being too vague.-SHER ALI v. EMPRESS, Panj. Rec., No. 18 of 1879.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other Voluntarily causing hurt person jointly concerned in committing or attemptin committing robbery. ing to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 394 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

THE two offences of robbery and of voluntarily causing hurt, when combined. are punishable under s. 304 alone, and not under ss. 302 and 304.—QUEEN v. MOOTKEE KORA, 2 W. R. 1. [Kemp and Glover,]]. Jan. 2, 1865.]

WHERE, in a case of robbery attended with death, there was no intention of causing death or such bodily injury as was likely to cause death, the conviction was altered from Ditto.



voluntarily causing hurt in committing robbery to voluntarily causing grievous hurt in committing robbery.—QUEEN v. CHAKOR HAREE, 6 W. R. 16. [Kemp and Seton-Karr, JJ. June 30, 1866.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp. 895. Whoever commits dacoity shall be punished with transportation for Punishment for dacoity.

Punishment for dacoity.

life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

CHARGE.—That you, on or about the day of , at , committed dacoity, an offence punishable under s. 395 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXVIII. (II.).

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 395 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

A PERSON convicted of, and sentenced for, dacoity cannot also be convicted of, and sentenced for, receiving or retaining the stolen property thereby acquired (dissentiente Loch, J.).—IN THE MATTER OF BHYRUB SEAL, W. R., Sp., 27. [Loch, Steer, and Glover, J]. May 2, 1864.]

IF a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 396 of the Penal Code; but he cannot be separately convicted of murder under s. 302, and of committing dacoity under s. 395.—Queen v. Rughoo, W. R., Sp., 30. [Loch and Jackson, J]. May 3, 1864.]

FIVE men armed were discovered committing an act of house-breaking by night. One of the parties was engaged in cutting a hole through the wall, while the others stood on guard. When the alarm was given, the neighbours ran up, and one of the robbers cut down one of the villagers. The robbers effected their escape, not how ver before two of them were identified, the prisoners in the case. Held that the crime of which the prisoners were guilty was house-breaking by night, and not dacoity.—Queen v. Rewer Rajwar, W. R., Sp. 39. [Loch, Seton-Karr, and Jackson, JJ. July 19, 1864.]

WHEN stolen property is found in the possession of dacoits, the offence of "knowingly having in possession" is to be considered as included in the original one of dacoity, unless there are circumstances clearly separating the one crime from the other, e.g., length of time or distance.—Quegn v. Abdool Hossein, 1 W. R. 48. [Kemp and Glover, J]. Dec. 22, 1864.]

THE Sessions Judge should record under what section, or on what grounds, he orders a portion of the fines inflicted on prisoners convicted of dacoity to be made over to the complainant.—QUEEN v. BISSONATH MUNDLE, 2 W. R. 58. [Jackson, J. April 10, 1865.]

WHEN persons are found within six hours of the commission of a dacoitý with portions of the plundered property in their possession, the presumption of the law is that they are participators in the dacoity, and not merely receivers.—QUEEN v. CASSY MOL, 3 W. B. 10. [Glover, J. May 6, 1865.]

Knowing of a design to commit a dacoity, and voluntarily concealing the existence of that design with the knowledge that such concealment would facilitate the commission of dacoity, does not amount to an abetment of the dacoity.—Queen re]Hugroo, 4 W.R. 2. [Seton-Karr and Jackson, JJ. Sep. 4, 1865.]

WHEN a prisoner is apprehended eight days after the commission of a dacolty with part of the plunder in his possession, there is as good ground for charging him with the dacoity as with having received or retained with guilty knowledge, and he ought to be charged in the alternative form.—QUEEN v. MOTEE JOLAHA, 5 W. R. 66. [Jacksos, J. April 9, 1866.]

SEVERE sentence of transportation for life, in a case of aggravated dacoity, confirmed as required by the state of the district.—QUEEN v. KHOODA SONTHAL, 6 W. R.9. [Seton-Karr, J. June 21, 1886.]

A SENTENCE of fine only is illegal in a case of dacoity.—QUEEN v. BHOJA, 6 W. R. 54. Dorman and Seton-Karr, JJ. Aug. 13, 1866.]

In a case of dacoity, a sentence of 14 years' transportation was held illegal, and reduction to ten years' transportation under s. 395 of the Penal Code.—QUEEN v. RAM CHAND FONJAH, 6 W. R. 88. [Kemp and Seton-Karr, JJ. Dec. 3, 1866.]

On an application to the High Court as a Court of Revision, to discharge an order tende by a Sessions Judge, under s. 435, Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 436, new Code of Criminal Procedure (Act X. of 1882), for the committal of certain accused persons for trial on a charge of dacoity, held that, as all that was done under a claim of right in good faith entertained by the accused, however choneously, the charge could not be sustained. The order of the Sessions Judge annulated.—Ex-parte KARAKA NACHIAR, 3 Mad. H. C. R. 254. [Collett and Ellis, JJ. Dec. 17, 1866.]

WHEN a body of men attack and plunder a house, the mere fact of the proprietor's family having been able to make their escape a few minutes before the robbers forced an entrance does not take that offence out of the purview of s. 395 of the Penal Code. It as sufficient for the application of the section that the robbers cause, or attempt to cause, the fear of instant hurt or of instant wrongful restraint.—Queen v. Kissoree Pater, 7 W. R. 35. [Glover, J. Feb. 19, 1867.]

S. 511 of the Penal Code does not apply to a case of dacoity. Where a prisoner was found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under s. 397, and a sentence of three years' rigorous imprisonment was passed on him, the finding was amended by striking out "ss. 397 and 511," and substituting "s. 395."—QUEEN v. KOONEE, 7 W. R. 48. [Jackson and Glover, JJ. Mar. 25, 1867.]

THE evidence of an approver, for whose appearance at the trial there was not the slightest reason, and the mere fact that in the houses of each of the four prisoners only see article of the stolen property was found, was held insufficient, under the circumstances of this case, where the best witnesses were not examined, to support a conviction of the prisoners on a charge of dacoity.—QUEEN v. RAM SAGAR, 8 W. R. 57. [Loch and Seton-Karr, JJ. Aug. 5, 867.]

A SENTENCE of 14 years' imprisonment cannot be passed for dacoity under s. 395 of the Penal Code.—Queen v. Harod Rujwar, 13 W. R. 27. [Bayley and Glover, J]. Feb. 14, 1870.]

The practice of dividing the facts which constitute the parts of one offence into several minor offences condemned. A person convicted of dacoity under s. 395, Penal Code, cannot be convicted also of dishonestly receiving stolen property under s. 411, or of receiving stolen property transferred by commission of dacoity under s. 412, when there is no evidence of the commission. Mode of treating the confession of prisoners as evidence in a case of receiving stolen property pointed out.—QUEEN v. SHAHABUT SHEIKH, 13 W. R. [Norman, Offg. C J., and Bayley, J. Mar. 8, 1870.]

MERELY being seen getting on board a boat with four persons who have on their own admissions been convicted of belonging to a gang of dacoits, is not sufficient evidence against those so seen. To make an admission of guilty knowledge of the means by which money supposed to have been acquired by dacoity was obtained, evidence under s. 150 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 26 of the Evidence Act (I. of 1872), it must be shown that the admission was antecedent to the discovery of the money.—Queen v. Kamal Fukeer, 17 W. R. 50. [Couch, C.]., and Ainslie, J. April 15, 1872.]

In this case the charge was originally one of dacoity under s. 395, Penal Code, and the proceedings were first conducted under ch. 18 of the Code of Criminal Procedure (A& X. of 1822), corresponding with ch. 22 of the new Code of Criminal Procedure (A& X. of 1882); but during the progress of the case the charge under s. 395 was lost sight of, and the accused were put on their defence on a charge of being members of an unlawful assembly under s. 143, Penal Code, and the proceedings were continued under ch. 17 of the Procedure Code (or ch. 21 of the new Procedure Code) in a summary way. Held that, had the complaint been one under s. 143, Penal Code, the Magistrate could, under s. 222, Code of Criminal Procedure (A& X. of 1872), corresponding with s. 260, new Code of Criminal Procedure (A& X. of 1882), have tried it in a summary manner under ch. 17 (or ch. 21 of the new Code); but, as the complaint was of a charge of dacoity under s. 395, the Magis-

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trate had no jurisdiction to try the case in a summary manner, but should have interior into it in a regular manner under ch. 18 (or ch. 22 of the new Code).—DWARKANA MOZOOMDAR v. NALU DASS, 21 W. R. 89. [Kemp and Birch, J]. April 20, 1814]

A AND B were committed for trial; the former for dacoity under s. 395 of the Per Code, and the latter under s, 412 for receiving stolen property, knowing it to hasted A made two confessions, and in both he stated he had handed over to B some pieces gold and silver stolen at the dacoity. When B was arrested, a gold ring and a silver wristlet were found in his possession. At the trial, A pleaded guilty, and B claimed a be tried. A goldsmith deposed that he had made the ring and wristlet found with out of pieces of gold and silver given to him for the purpose by B On this evidence as on the confessions made by A, the Sessions Judge convicted B. On appeal to the Him Court, held that, A and B not having been tried jointly for the same offence, the chairs sion of A was inadmissible as evidence against B. There was, therefore, no evidence are the identity of the goods stolen at the dacoity with those found in B's possession, and the case against him failed. Conviction quashed.—EMPRESS v. BALA PATEL, I. L. R., Bood 63. [Westropp, C.J., and Melvill, J. April 7, 1880.]

Where a large body of Hindus, acting in concert, and apparently under the interest of religious feeling, attacked certain Mahomedans who were driving cattle along a public road, and forcibly deprived them of the possession of such cattle under circumstants which did not indicate any intention of subsequently restoring such cattle to their law owners, held that the offence of which the Hindus were guilty was dacoity under a fit of the Penal Code, and not merely riot.—Queen-Empress v. Ram Baran, I. L. Rass Ale 299. [Edge, C.]. and Barkitt and Aikman, J. July 14, 1893.]

Ct. of Ses. Cognizable. Warrant.
Not bailable.
Not comp.

396. If any one of five or more persons who are conjointly committed date of the persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 396 of the Penal Code, shall forthwith give information to the nearest Magistra or police.officer of such commission or intention.—Crim. Pro. Code (Act X. of 1884) s. 44.

If the act by which death is caused does not in itself constitute the crime of marder, it does not constitute murder, because it is coupled with dacoity.—QUEEN v. RAMCOOMAR CHUNG, I Ind. Jur., O. S., to8. {Steer, Seton-Karr, and Jackson, JJ. Nov. 17, 1862.]

If a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 396 of the Penal Code, but he cannot be separately convicted of murder under s. 302, and of committing dacoity under s. 395.—Queen v. Rughoo, W. R. Sp., 30. [Loch and Jackson, J]. May 3, 1864.]

The case of a prisoner who, after having committed dacoity attended with nearder, absconded to Bhootan. On the annexation of the Bhootan Dooars by the British Government, he was arrested, and, after conviction, was sentenced to transportation for life.

—Quben v. Roopa, 2 W. R. 49. [Glover, J. Mar. 21, 1865.]

Ditto.

Robbery or dacoity, with attempt to cause death or grievous hurt.

Solution of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 397 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

THEFT with violence is robbery. A conviction under s. 397 of the Penal Code is good, whether the number of thieves be five or under. —QUEEN v. DWARKA AHEER, R. 49. [Glover, J. Mar. 21, 1865.]

S. 511 of the Penal Code does not apply to a case of dacoity. Where a prisoner was guilty of an attempt at dacoity under that section, and of causing grievous hurt in attempt under s. 397, and a sentence of three years' rigorous imprisonment was ed on him, the finding was amended by striking out "ss. 397 and 511," and substitutes. 395."—QUEEN 7, KOONEE, 7 W. R. 48. [Jackson and Glover, JJ. Mar. 25, 1867.] " and substitut-

UNDER \$ 397, it is only the offender actually causing grievous hurt who is liable to mhanced punishment.—Mad. H. C. Rul., Mar. 18, 1868.

tempt to commit robbery when armed with ly weapon.

898. If, at the time of attempting to commit robbery or dacoity, the of- Ct. of Ses. fender is armed with any deadly weapon, the impri-Cognizable, sonment with which such offender shall be punished Not bailable, shall not be less than seven years. ***

Not comp.

Ditto.

EVERY person, whether within or without the Presidency-towns, aware of the comson of, or efethe intention of any other person to commit, any offence punishable er s. 398 of the Penal Code, shall forthwith give information to the nearest Magistrate police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882),

king preparation to com-

399. Whoever makes any preparation for committing dacoity shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the com-sion of, or of the intention of any other person to commit, any offence punishable er s. 389 of the Penal Code, shall forthwith give information to the nearest Magistrate police officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882),

UNDER the Penal Code, preparation to commit an offence is punishable only when preparation was to commit dacouty. Treparation to commit any other offence, such onse-breaking or robbery, is not an offence. - REG. m. SHERA 2 Pani. Rec. 42.

400. Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of maishment for belonging to mang of dacoits. habitually committing dacoity, shall be punished th transportation for life, or with rigorous imprisonment for a term which my extend to ten years, and shall also be liable to fine.

MERELY being seen getting on board a boat with four persons who have on their own missions been convicted of belonging to a gang of dacoits, is not sufficient evidence inst those so seen. To make an admission of guilty knowledge of the means by which mey supposed to have been acquired by dacoity was obtained, evidence under s. 26 of 1. of 1872, it must be shown that the admission was antecedent to the discovery of the ney.—QUEEN v. KAMAL FUKEER, 17 W. R. 50. [Couch, C.J., and Ainslie, J. 1872.

It is necessary, in order to establish a charge under s 400, Penal Code, that the prosecution should make out that there existed as the time specified a gang of persons asociated together for the purpose of habitually committing dacoity, and that the accused as one of the game.—Queen v. Mooktaram Sirdar, 23 W. R. 18. [Phear and Ainslie, II. Jan. 13, 1875.]

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated Punishment for belonging to wandering gang of thieves. for the purpose of habitually committing their or subbery, and not being a gang of thugs or datoits, shall be punished with Sec 316 agorous imprisonment for a term which may extend to seven years, and shall. also be liable to fine.

Ditto.

Ditto.

It is an offence under s. 401 to belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, but it is not sufficient to support a conviction under that section, that the accused should be proved to be simply a member of a robber-tribe; it should also be shown that he actually consorted with persons who were themselves associated for the purpose of habitually committing theft or robbery.—Peers v. Crown, Panj. Rec., No. 37 of 1869.

• In the trial of prisoners for the offence of belonging to a gang of persons associated for the purpose of habitually committing theft or robbery (s. 401, Penal Code), the judge should, in his charge, put clearly to the jury (1) the necessity of proof of association; (2) the need of proving that that association was for the purpose of habitual that, and that the habit is to be proved by an aggregate of acts—In re Shriram Verharasami, 6 Mad. H. C. R. 120. [Holloway and Kindersley,]]. Feb. 21, 1871]

To sustain a conviction on a charge under s. 401, there must be (1st) proof of association, and (2nd) proof that the association was for the purpose of habitual theft, and that habit should be proved by an aggregate of acts. Where, therefore, the accused was arrested together in one village, and there was no doubt that each of the accused had individually committed theft or robbery, but it was not shown that there had been any association among the accused for the purpose of committing theft or for bery, much less for the purpose of habitually committing such offences, held that the conviction under s. 401 was not sustainable.—Africial v. Empress, Panj. Rec., No. 9 of 1880.

Ct. of Ses. Cognizable. Warrant. Not bailable Not comp. 402. Whoever, at any time after the passing of this Act, shall be one

Assembling for purpose of committing dacoity.

of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Every person, whether within or without the Presidency towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 402 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act. X. of 1882), s. 44.

CASE of an unlawful assembly, the members of which were held guilty of an offence under s. 402 of the Penal Code on their own admission that they not only knew that the assembly was an assembly for the purpose of committing dacoity, but also that all the persons (including themselves) constituting the assembly lived on the proceeds of dacoity, and had no other means of living.—QUEEN v. KENDRA KAMAR, 7 W. R. 61. [Hobbouse, J. April 30, 1867.]

OF CRIMINAL MISAPPROPRIATION OF PROPERTY.

Any Mag. Uncog. Warrant. Bailable. Not comp. Dishonest misappropriation of property.

Dishonest misappropriation of property.

Dishonest misappropriation any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(a.) A takes property belonging to Z out of Z's possession, in good faith believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b.) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But, if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c.) A and B being joint owners of a horse. A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse, and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

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Rulings.

A PERSON was convicted and sentenced under s. 411 of the Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. It was found that, at the time of the alleged misappropriation, the bull had been set at large by some Hindu, in accordance with Hindu religious usage, at the time of performing funeral ceremonies. Held that the bull was not, at the time of the alleged misappropriation, amount within the meaning of the Penal Code, inasmuch as, not only was it not the solder of ownership by any person, but the original owner had surrendered all his rights as its proprietor; that it was therefore nullius proprietas, and incapable of largeny being committed in respect of it; and that the conviction must be set aside.—Queen-Em-Pens Bandhu, I. L. R., 8 All. 51. [Straight, J. Dec. 7, 1885.]

Vido See. 201

R was a Government servant, whose duty it was to receive certain moneys, and to pay them into the treasury on receipt. He admitted that he had retained two sums of money in his possession for several months, when fearing detection he paid them into the treasury, making a false entry at the time in his books with a view to avert suspicion. His emphastion as to his reason for retaining the money was not credited by the Magistrate, who convicted him of criminal misappropriation under s. 403 of the Penal Code. Held that the conviction was right.—Queen-Empress v. Ramakrishna, I. L. R., 12 Mad. 49. [Wilkinson and Shephard, JJ. Sep 11, 1888.]

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any tother person, and takes such property for the purpose of protecting it for, or of restoring it for the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what a reasonable time, in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustrations.

- (a.) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.
- (b.) A finds a letter on the road containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.
- (a) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.
- (d.) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offsece under this section.

- (e.) A finds a purse with money, not knowing to whom it belongs; he afterward discovers that it belongs to Z, and appropriates is to his own use. A is guilty of a offence under this section.
- (f.) A finds a valuable ring, not knowing to whom it belongs. A sens it immediately without attempting to discover the owner. A is guilty of an offence under this section.

Rulings.

THE mere fact that the prosecution gave the prisoner time to make out his accounts and pay the balance due, does not vitiate a conviction for dishonest misapprepriation, o show that the matter is one for the Civil Courts only.—In re SREEKANT BISWAS, 5 W. R 56. [Macpherson,]. Mar. 24, 1866.]

To bring a prisoner within s. 403 of the Penal Code there must be actual converse of the thing appropriated to the prisoner's own use. Where, therefore, the accuse for a thing, and merely retained it in his possession, he was acquitted of criminal misepper priation under the section referred to.—QUEEN v. ABDOOL, 10 W. R#23. [Lock as Glover, JJ, July 27, 1868.]

A SERVANT, who retains in his hands money which he was authorized to collect, as which he did collect, from the debtor of his master, because money is due to him as wage is guilty of criminal misappropriation.—QUEEN v. BISSESSUR ROY, 11 W. R. 51. [Jackso and Markby,]]. May 13, 1869.]

In a case in which the accused is charged with having dishonestly appropriated pretry under s. 403 of the Penal Code, the charge should specify the person to whom the property belonged. Where the accused is interested in the property jointly with other he is not necessarily guilty of a criminal act if he takes possession of it, and disposes it.—QUEEN v. PARBUTTY CHURN CHUCKERBUTTY, 14 W. R. 13. [Phear and Mitter, July 2, 1870.]

WHERE money is paid to a person by mistake, and such person, either at the the of the receipt of the money, or at any time subsequently before its refund, discovers to mistake, and determines to appropriate the money, he is guilty of criminal misaprecopation, but he is not guilty of cheating.—QUEEN v. SHAMSUNDER, 2 N.-W. P. 475. [Time]. Dec. 17, 1870.

If it be the duty of the agent of a landholder to keep the collections he makes for master separate from his own moneys, expending thereout moneys on his master's behave and handing over the balance to his master, and if he, in breach of his trust, converts money to his own use, he is amenable to a criminal prosecution. And where a landown permits the agent to mix the collections with his own moneys, if the agent applies money so collected to his own use fraudulently and dishonestly, and falsifies the accouss as to conceal his fraud, there is evidence of a criminal misappropriation.—Queen Kareem Bux, 3 N.-W. P. 30. [Turner, J. Feb. 7, 1871.]

This was considered to be a matter of trade between the prosecutrix and the priser, who took certain hides from the former, but refused to pay for them, and was hot guilty of dishonest misappropriation under s. 403 of the Penal Code.—QUEEN BOYSTUM MOOCHEE, 17 W. R. 11. [Kemp and Jackson, J]. Feb. 3, 1872.]

Fish in a public river cannot be said to be property in the nossession of the person who may have the fishery right, and the infringement of that right is not the straight of the Penal Code. The accused were charged with unlawfully taking fish along wisome eleven others in a public river, the right of fishing in which had been let out by a Government to the complainant, and the lower Court, amongst other offences, convict them of theft, criminal misappropriation, mischief, criminal trespass, and unlawful a sembly. Held that the conviction was wrong, and that no offence had been committed.—BHAGIRAM DOME v. ABAR DOME, I. L. R., 15 Cal. 388. [Norris and Ghose,]]. 124, 1888.]

A BULL dedicated to an idol, and allowed to roam at large, is not fera bestia, a therefore res nullius, but, primá facie, the trustee of the temple, where the idol is we shipped, has the rights and liabilities attaching to its ownership.—QUEEN-EMPRESS NALLA, I. L. R., 11 Mad. 145. [Muttusami Ayyar and Brandt, J]. Sep. 13, 1867.]

A, THE male managing member of a joint Hindu family, removed an frontier, t property of the joint-estate, but containing properties which exclusively beloaged to the

other members of the family, from the possession of the latter, without their consent. Held that A, by removing the iron-safe, did not commit theft or any other offence, but he was guilty of criminal misappropriation if, on discovering the contents of the ironsale to be properties belonging to others, he retained those properties and attempted to appropriate them. -IN THE MATTER OF KOOMAR JOGENDRO NATH ROY, Shome's Rep. 31.

THE word "object" in s. 295 of the Penal Code does not include animate objects. A bull dedicated and set at large at the sradha of a Hindu in accordance with religious sage is not an "object" within the meaning of that section. When such an animal was killed by certain Mahomedans, secretly and at night, in the presence of none but Mahomedans, for the sake of the meat and value of the skin, held that no offence had been committed under s. 295. Queen-Empress v. Immam Ali (I. L. R., 10 All. 150) followed. Held, further, that such a bull is not "moveable property" within the meaning of ss. 378 and 403, or "property" within the meaning of s 425 of the Penal Code, and rould not, therefore, be the subject of theft, criminal misappropriation, or mischief. The fact that such a bull receives some attention from the cowherd of the persons who set it at liberty, and is daily fed by him by direction of his employers, and is not used for breeding purposes without their permission being asked, is not inconsistent with a total surrender by those who set it at liberty of all their rights as proprietors. Queen-Empress v. Bandhu (I. L. R., 8 All. 51) followed. Queen-Empress v. Nalla (I. L. R., 11 Mad. 145) referred to and commented on. For the purpose of construing a section of an Act, and ascertaining the intention of the Legislature, the Report of the Indian Law Commissioners or a Select Committee appointed to consider a Bill may be referred to. Queen-Empress v. Kartick Chunder Das (I. L. R., 14 Cal. 721) followed .- ROMESH CHUNDER SANNYAL v. HIRU MON-DAL: I. L. R., 17 Cal. 852. [Norris and Macpherson, JJ. Mar. 27 & April 15, 1890.]

THE accused, being in the employ of Government in the Post-office Department. while assisting in the sorting of letters, secreted two letters with the intention of handing them to the delivery-peon, and sharing with him certain momeys payable upon them. He was charged under the Post-office Act, s. 48. Held (1) that, since the intention of the accused was not to prevent the delivery of the letters to the addressees, he was not guilty of the offences of secreting them within the meaning of that section; (2) that he was guilty of the offence of stealing, and of fraudulently misappropriating, the letters within the meaning of that section, and of the offence of theft and of attempt to commit dishonest misappropriation of property within the meaning of the Penal Code.—Queen-EMPRESS v. VENKATASAMI, I. L. R., 14 Mad. 229. [Collins, C J., and Weir, J. Oct. 17, Nov. 13, 1890.

THE accused, finding a gold mohur on an open plain, sold it the next day to a shroff! for the full value, and appropriated the sale-proceeds. Held that, in the absence of any information as to the circumstances under which the coin was lost, and as it was not improbable that the property in the coin had been abandoned by the original owner, the accused could not be convicted of criminal misappropriation under s. 403 of the Penal Code. -Queen-Empress v. Sita, I. L. R., 18 Bom. 212. [Candy and Fulton, J]. Mar. 9. 1893.]

of property possessed by a decessed person at the time of

404. Whoever dishonestly misappropriates or converts to his own use Ct. of Ses., Dishonest misappropriation property, knowing that such property was in the Presy. Mag. possession of a deceased person at the time of that or Mag. of 1st person's decease, and has not since been in the or 2nd class. possession of any person legally entitled to such Bailable.

possession, shall be punished with imprisonment of either description for a Not comp. term which may extend to three years, and shall also be liable to fine; and, if the offender, at the time of such person's decease, was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

or Enforce the men to do so any broke with wh his entered is having any nur turane — Obreal trus OFFENCES AGAINST PROPERTY. [CHAP. XVII.

SEC. 405.]

Rulings.

A PERSON may commit the offence of dishonest misappropriation of property possessed by a deceased person at the time of his death (s. 404, Penal Code) by dishonestly misappropriating the money entrusted to him, although he does not bring such money to his own use.—In the Matter of Enayet Hossein, 11 W. R. I. [Jackson and Markby,]]. Jan. 12, 8866.]

S. 404 of the Penal Code (relating to the misappropriation or conversion of "property" left by a deceased person) does not apply to immove able property.—REG. 9. GIRDHAR DHARAMDAS, 6 Bom. H. C. R. 33. [Tucker and Gibbs,]]. Mar. 5, 1869]

It is not necessary for a conviction for dishonest misappropriation of property possessed by a deceased person at the time of his death, under s. 404 of the Penal Code, that the accused should misappropriate it to his own use. Held by Markby, J., that under s. 424 all the elements are required to constitute the offence which would be required to constitute the offence of criminal misappropriation in respect of a person who is alive.—Queen v. Nobin Chunder Sircar, 12 W. R. 39. [Jackson and Markby,*]]. July 27, 1869.]

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OF CRIMINAL BREACH OF TRUST. [mousable for par

405. Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

Illustrations.

- (a.) A, being executor to the will of a deceased person, dishonestry disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.
- (b.) A, is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.
- (c.) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.
- (d.) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.
- (e.) A, a revenue-officer, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.
- (f.) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

Ruling.

WHERE a complaint only amounted to a statement that the accused had, in consequence of certain arrangements made with the complainant's father, received certain moneys, and had refused to render accounts, but contained no allegation that he had, in

tact, realized and dishonestly misappropriated any particular sum, and obviously was made for the purpose of forcing him to render accounts, held that the Magistrate was right in dismissing it, since the facts alleged did not constitute criminal breach of trust.—QUEEN-EMPRESS v. MURPHY, I. L. R., 9 All. 666. [Mahmood, J. April 18, 1887.]

WHEN a bank takes a deposit from its customer, it takes it on the understanding that that deposit is not to be used to pay dividends to shareholders at a time when the bank is insolvent, and cannot legally pay dividends. In the case of a bank registered under the Indian Companies Act as a company limited by shares, and governed by the regulations contained in Table A in the first schedule to the Act, it was held that the directors had dominion over the property and the management of the funds of the bank; that they were bound not to pay dividends except out of the profits of the bank; and that, if they dishonestly, that is, knowingly and intentionally, paid dividends to the shareholders out of deposits when there were no profits, intending to cause gain to themselves or others to which they were set entitled, or to cause wrongful loss to other persons, they were guilty of criminal breach of trust as bankers under s. 400 of the Penal Code; but that the manager and the accountant or assistant manager were not, within the meaning of the section, persons who were entrusted with property or with dominion over property as bankers or agents, and therefore did not come directly under s. 409, though they might be guilty of abetment under s. 409 read with s 109, by conspiring with the directors to commit criminal breach of trust, if they assisted the directors to obtain the sanction of the shareholders to the illegal payment of dividends, and did so for the dishonest purpose of causing wrongful gain or wrongful loss. Whether the illegal payment of dividends under the circumstances stated could be regarded as causing wrongful loss to the bank as a corporate body, quære. Whether moneys deposited in the bank by its customers, and not in any way ear-marked, could, after such deposit, be regarded as "property" of the depositors within the meaning of s. 400, quære. Held also that, if the directors, manager, and accountant, dishonestly, that is, to obtain wrongful gain for themselves or to cause wrongful loss to others, put before the shareholders balance-sheets which they knew to be materially false and misleading, and likely to mislead the public as to the condition of the bank, and concealed its true condition, and thereby induced depositors to allow their money to remain in deposit in the bank, they were guilty of cheating in the aggravated form made punishable by s. 418 of the Penal Gode; and if they acted together to put forward such a false balancesheet, they were guilty of abetment by conspiracy to cheat.—Semble. The making of such a false balance-sheet is not an offence within s. 101 of the Penal Code, and, where it is made prior to the commencement of the winding-up of the company, is not an offence within s. 245 of the Indian Companies Act (VI. of 1882). A balance-sheet of a company under the Indian Companies Act must be a true balance-sheet, in the sense that it must represent the actual state of the company's assets and liabilities. If it falsely states the condition of the company, it is a false balance-sheet, though it follows the accounts as shown in the books of the company, and correctly represents what is in the books. A balance-sheet which showed all the debts owing to the company, amounting to Rs. 28 lakhs under the head of assets, without specifying, in accordance with the form of balance sheet annexed to Table A, which of such debts were good and secured, which good and unsecured, and which considered bad and doubtful, and also showed a divisible balance of profits amounting to Rs. 19.000, the facts being that out of the Rs. 28 lakhs some Rs. 13 lakhs were bad and irrecoverable, and that the capital reserve-fund and other provision for bad debts had been lost, and that the company, instead of making profits, was, and long had been, insolvent, was found to be false and misleading. Having regard to the nature of the charges above referred to, the Court, under s. 239 of the Code of Criminal Procedure, rejected an application by the defence that the accused should be tried separately. The word "European" in s. 451 of the Code of Criminal Procedure means persons born in Europe. The word "compelled" in the proviso to s. 132 of the Evidence Act (I. o 872) applies only where the Court has compelled a witness to answer a question, and not to a case where the witness has not asked to be excused from answering a question, but gives his answer without any claim to have himself excused. A deposition on oath made by one of several accused, as a witness, in a previous inquiry under ss. 162, 163 of the Indian Companies Act (VI. of 1882), was admitted in evidence against himself only, and not against the other accused. The action of the defence, during the cross-examination of a witness for the Crown, in tendering a document to such witness, and using the same as evidence for the defence, was held to entitle the Crown to reply under s. 292 of the Code of Criminal Procedure.—QUEEN-EMPRESS v. Moss, I. L. R., 16 All. 88. [Edge, C.J., and a Jury. Nov. 20, Dec. 12, 1893.]

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

408. Whoever commits criminal breach of trust shall be punished with.

Penishment for criminal imprisonment of either description for a term which breach of trust.

imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHARGE.—That you on or about the at e, being entrusted with certain property, to wit, committed criminal breach of trust, in respect of such property, and that you thereby committed an offence punishable under s. 406 of the Indian Penal Code, and within, &c.

To sustain a charge of criminal breach of trust, it is essential to establish the criminal character of the act by which the trust has been violated.—Govt. v. Doorga Presents, N. A., N.-W. P., Pt. II., 40.

THE acceptor of a bond covenanting to return a sum embezzled was held to be precluded from prosecuting the giver for criminal breach of trust.—Govr. v. Golam Hossin. 6 N. A., N.-W. P., Pt. II., 86.

In cases which can lawfully be compounded, a composition entitling a party to bring a civil action thereupon amounts to a condonation of the criminal offence, and to an implied agreement not to prosecute. Where the terms of the composition are infringed, a civil suit would lie—not a criminal prosecution.—Govt. v. Sewaram, 5 N. A., N.-W. P., Pt. II., 227, 1864.

A REFUSAL to give up land alleged to have been mortgaged, the mortgage being denied, cannot be treated as a dishonest misappropriation of the documents of title amounting to a criminal breach of trust under s. 405 of the Penal Code.—Reg. v. Jaffir Nair, 2 Bom. H. C. R. 127. [Couch and Newton, J]. Dec. 7, 1864.]

If a mortgagor in possession, who is entrusted with dominion over the mortgaged property by the mortgagee in whom the property is in mortgage in the English form, wilfully defaults, and causes the property to be sold for arrears of Government revenue for the purpose of defrauding the mortgagee, and purchases it benami, he is liable to be purposed to criminal misappropriation under s. 405 of the Penal Code.—RAM MANTE SHAHA W. BRINDABUN CHUNDER POTDAR, 5 W. R. 230 (Civ. Rul.). [Norman and Campbell,]]. May 2, 1866.]

The misappropriation of each separate item of money with which a person is entrasted is a separate offence, and the facts connected with it should form the subject of a separate inquiry. The duty of a committing officer in such a case is to select certain distinct items, to frame his charges upon them, and to adduce evidence specially upon those items.

—IN THE MATTER OF CHETTER (C. A.), 15 W. R. 5. [Jackson and Mookerjee, J]. Jan. 21, 1871.]

A PERSON who pledges what is pledged to him may be guilty of criminal breach of trust. There are two elements: (1) the disposal in violation of any direction of lawor contract, expressed or implied, prescribing the mode in which the trust ought to be discharged; (2) such disposal dishonestly.—Pro., May 23, 1871, 6 Mad. H. C. R., Ap., 48.

To constitute the offence of criminal breach of trust, there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of whom the breach of trust is charged.—ISSUR CHUNDER GROSE v. Pearl Mohun Palit, 16 W. R. 39. [Kemp and Glover, JJ. Aug. 5, 1871.]

WHERE a sub-inspector of police was charged with having purchased a pony which had been impounded, it was held that the Magistrate should have proceeded under s. 19, Act I. of 1871, taken with s. 169, Penal Code, and that the accused could not be convicted under s. 300 of the Penal Code, of criminal breach of trust.—In the Matter of Rajkristo Bisway, 16 W. R. 52; 8 B. L. R., Ap., 1. [Kemp, Offg. C.]., and Ainslie, [. Sep. 25, 1871.]

A PARTNER who dishonestly misappropriates or converts to his own use, or dishonestly uses or disposes of any of the partnership property which he is ensusted with of his dominion over, is guilty of criminal misappropriation under s. 405 of the Penal Code.—NRIGENDRO LALL CHATTERJEE v. OKHOY COOMAR SHAW, 21 W. R. 59; 13 B. L. R. 307. [Couch, C.]., and Jackson, Phear, Birch, and Morris, JJ. Mar. 30, 1874.] Overrules Lall Chand Roy, 9 W. R. 37. Follows Queen v. Gour Benode Dutt, 21 W. R. 59; 13 B. L. R. 308n.

WHEN a master entrusts his servant with money for the payment of an open account, i. e., an account of which the items have never been checked or settled, and the tradesman

makes the servant a present, and the transaction amounts to a taxation of the bill and a daction of the price by the servant, the latter obtains the reduction for his master's bethe money in his hands always remains the master's property, and, if he appropriates it, he commits animinal breach of trust. But where the master himself has settled the account with the tradesman for a specific sum, and sends the servant with the money, and the servant, after making the payment, accepts a present from the tradesman, in that case the servant does not commit criminal breach of trust, inasmuch as the money is given to him by a person whom he believes to have a right to give it, though it may be that, according to the strict equimble doctrines of the Court of Chancery, he is bound to account to the master for the money. Hay's Case [In re Canadian Oil Works Corporation (L. R., 10 Ch. Ap. 393)] referred to. Where the Court of Session had tried, convicted, and sentenced an acoused person under s. 409 of the Penal Code, and the High Court was of opinion that the conviction was not sustainable under that section, the Court refused to also the finding, under s. 423 of the Criminal Procedure Code, to a conviction for some other offence for which the accused had not been charged or tried. Observations on the Becessity of requiring corroboration, in material particulars, of the evidence of an accomplice. Empress . Ram Saran (Weekly Notes, 1885, p. 311) referred to.—QUEEN-EMPRESS . IMDAD KHAN, I. L. R., 8 All: 120. [Petheram, C.J. Dec. 21, 1885.]

407. Whoever, being entrusted with property as a carrier, wharfinger, or Ct. of Ses., warehouse-keeper, commits criminal breach of trust Presy. Mag. Criminal breach of trust by in respect of such property, shall be punished with or Mag. of 1st class. imprisonment of either description for a term which may extend to seven years, Cognizable. and shall also be liable to fine.

A is charged under s. 407 of the Penal Code with criminal breach of trust in respect Not comp. of property entrusted to him as a carrier. It appears that he did commit criminal breach 🐾 of trust under s. 426 in respect of the property, but that it was not entrusted to him as a Carrier. He may be convicted of criminal breach of trust under s. 406.—Crim. Pro. Code (AC X. of 1882), s. 238, ill. a.

B, ENTRUSTED with rice at M (a port in British India) for conveyance to C (also a port in British India), took the rice to G, a port in foreign territory, and there sold it. He was a convicted at M of criminal breach of trust as a carrier under s. 407 of the Penal Code. Held that the Sessions Court at M had no jurisdiction to try the offence under the Code to of Criminal Procedure. Held also that no offence was committed on the high seas so as to give the Court jurisdiction under 12 and 13 Vic., c. 29, extended by 23 and 24 Vic., c. 88.—BAPU DALDI v. REG., I. L. R., 5 Mad. 23. [Innes and Muttusami Ayyar,]]. Feb. 26, 1882.]

THE accused were charged under s. 407 of the Penal Code with committing criminal breach of trust in respect of certain property entrusted to them as carriers. They were all native Indian subjects of Her Majesty. The offence was alleged to have been committed in Portuguese territory, and they were found in a place in British territory. Held that under s. 188 of the Criminal Procedure Code (Act X. of 1882) the accused could be tried in the place where they were found.—QUEEN-EMPRESS v. DAYA BHIMA, I. L. R., 13 Bom. 147. [Birdwood and Parsons, JJ. July 5, 1888.]

408. Whoever, being a clerk or servant, or employed as a clerk or servant, Ct. of Ses., •Criminal breach of trust by and being in any manner entrusted in such capacity Presy. Mag with property, or with any dominion over property, or Mag. of 1st commits criminal breach of trust in respect of that property, shall be punished Cognizable. with imprisonment of either description for a term which may extend to seven Warant. Notballable. years, and shalf also be liable to fine.

CHARGE.—That you, on or about the , being a servant of , at , and being in such capacity entrusted with dominion over property, to wit, worth Rs. , committed criminal breach of trust in respect of that property.-2 W. R., Cr. L., 15, No. 203 of 1865.

WHERE a Court Inspector improperly delegated to a constable the custody, &c., of Government money (taking from him private security to save himself from loss in case of delalcation), and the constable dishonestly converted the money to his own use, although

he afterwards restored it, the case was held to fall under s. 408, and not s. 409, of the Penal Code, and the sentence reduced from 10 years' transportation and a fine of Rs. 500 to one year's rigorous imprisonment without fine.—QUEEN v. BANES MADHUS GROSE, 8: W. R. 1. [Seton-Karr and Glover, J]. June 1, 1867.]

A SERVANT, who receives money for a specific purpose, and does not use it for that purpose, and, on being called on to account for the money, falsely says that he used it for that purpose, is guilty of criminal breach of trust under s. 408 of the Penal Code.—Warson & Co. v. Golab Khan, 10 W. R. 28; 1 B. L. R., S. N., 21. [Loch and Glover, J. Aug. 22, 1868.]

Accused was employed by the Panjab Bank as its treasurer at Multan. ing for a few days in that capacity, he, with the consent of the Bank, put in one D 🖛 🛍 agent or gomashta, himself removing to other employment at Amritsar, but continued to receive pay from the Bank. D misappropriated certain moneys of the Bank, and finally absconded. The Sessions Court found that accused had received some of the misses. propriated money from D, and had connived at D's defalcation; and convicted has criminal breach of trust as a servant, and of abetting the same. In appeal, it was contended for the accused, inter alia, that he was treasurer only in name, and had no dowlnion over the misappropriated property; consequently he was not a participator in selecence to D's defalcation; and, as to the latter, he was the servant of the accused, not of the Bank, so that, whatever his offence, he had not committed breach of trust as a seevant. Found by the Chief Court that both accused and D were servants of the Bank; that D had committed breach of trust as such, and that accused had received the miss propriated money from D with a guilty knowledge. On the question whether this amounted to abetment of D's offence, or to dishonest receiving under s. 411, it was held that, although no act done by accused after D's offence was committed would make the former guilty as an abettor, yet as accused, who, as the Bank's treasurer, was bound be disclose the fact that he had irregularly received the Bank's money on the first defalestion, did not do so, he was guilty of an illegal omission, by which he voluntarily cann the safe abstraction and transmission to himself of the second sum, and had, there abetted the breach of trust by a servant.—KALOO RAM v. CROWN, Panj. Rec., No., 200 all 1868.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Not bailable. Not comp.

Criminal breach of trust by public servant, or by banker, merchant, or agent.

Criminal breach of trust in respect of that property, in his capacity of a public servant, or in the way of his business as a banker, merchant, factor, broker, attorney, or agent, commits transportation for life, or with imprisonment of either description for a term

THE offence of a person who makes away with property which has been placed in his charge and possession is not theft, but criminal breach of trust.—In the Watter of Bharut Chunder Christian, 1 W. R. 2. [Kemp and Glover, JJ. Aug. 8, 1864.]

which may extend to ten years, and shall also be liable to fine.

THEFT by constables of property from the house they were employed to guard is punishable under s. 380, and not s. 400, Penal Code.—Queen v. Boidnath Since, 3 W. R. 29. [Jackson and Glover, JJ. June 17, 1865.]

A CONSTABLE who dishonestly misappropriates to his own use the pay of his thanpolice entrusted to him is guilty of criminal breach of trust.—QUEEN v. SUBDAR MERAE,
3 W. R. 44. [Kemp and Seton-Karr, J]. July 11, 1865.]

THE mere fact that the prosecutor gave the prisoner time to make out his account, and pay the balance due, does not vitiate a conviction for dishonest misappropriation, or show that the matter is one for the Civil Courts only.—In re SREEKANT BISWAS, 5 . 8.

56. [Macpherson, J. Mar. 24, 1866.]

Where a Court Inspector improperly delegated to a constable the custody, the, of Government money (taking from him private security to save himself from loss is case of defalcation), and the constable dishonestly converted the money to his own use, although he afterwards restored it, the case was held to fall under s. 408, and not s. 409, of the Penal Code, and the sentence reduced from 10 years' transportation, and a line of Rs. 500, to one year's rigorous imprisonment, without fine.—Queen v. Banks Market Ghose, 8 W. R. 1. [Seton-Karr and Glover, J]. June 1, 1867.]

A VILLAGE-SHROFF, whose duty it was to assist in collecting the public revenue, reserved grain from roots, and gave receipts as if for money received by virtue of a private arrangement. Held that he could not be convicted of criminal breach of trust by a public servant under s. 400 of the Penal Code, as he was not authorized to receive the public revenue in kind, and the party who delivered the grain did not thereby discharge himself from liability for the revenue.—Pro., Feb. 12, 1860, 4 Mad. H. C. R, Ap., 32.

3. 409 of the Penal Gode does not limit the mode in which a trust arises, whether by specific order, or by reason of its being part of the proper duty of a public functionary. Where, therefore, it was proved that the head clerk of an office entrusted the management of stamps, with the knowledge and sanction of his superiors, to one of his assistants, the latter was held to be guilty of criminal misappropriation by a public servant within the meaning of 3. 409 when he made away with the stamps.—Queen v. Ram Dhun Dey, 13 W. R. 77. [Jackson and Glover, J]. May 28, 1870.]

The naib-nazir is a public servant within the meaning of s. 400 of the Penal Code, and not the mere private servant of the nazir.—Queen v. Mahmood Hossein, 2 N.-W. P. 298. [Spankie, J. July 18, 1870.]

A TRAVELLER, with considerable property, partly cash and gold coins, put up at a sarai, and, believing himself to be dying, sent to the police-station for protection of his property. The accused the thana-moharan ment to the sarai, and received charge of the property. Held by Lindsay and Fitzpatrick, J. (Plowden, J., dissenting), that the accused was entrusted with the property in his capacity of a public servant within s. 409, as the accused was empowered by s. 95, Criminal Procedure Code (corresponding with s. 149, Act X. of 1882), to receive the property to prevent the commission of an offence, i.e., theft by other persons taking advantage of the illness or death of the traveller.—Bhag Sing v. Crowx, Panj. Rec., No. 24 of 1876.

The prisoners were charged with having stolen a sum of money shut up in a box, and placed in the Police Treasury buildings, over which they, as barkandazes, were placed in guard. Held that the charge should have been made under s. 301 of the Penal Code (theft by a servant in possession of property), and not under s. 409 (criminal breach of trust by a public servant).—QUEEN v. JUGGURNATH SINGH, 2 W. R. 55. [Seton-Karr, Jackson, and Glover, JJ. April 3, 1877.]

Where a Magistrate, erroneously holding that the offence committed was one under s. 406, Penal Code, over which he had jurisdiction, instead of under s. 409 which was cognizable only by the Court of Session, tried and sentenced the accused, it was held by the High Court as a Court of revision that his proceedings were contrary to law, and he was directed to commit the case for trial by the Court of Session. To constitute an offence under s. 409 it is not necessary that the property should be that of Government, but that it should have been entrusted to a public servant in that capacity.—In THE MATTER OF RAW SOONDER PODDER, 2 C. L. R. 515. [Ainslie and Broughton, JJ. June 13, 1878.]

Where the accused, in his capacity of revenue-patel, received from the Government treasury small sums of money on account of certain temple-allowances, and did not at once pay over the same to the persons entitled to receive them, as he was bound to do, but it appeared that such persons were willing to trust him, and had actually passed receipts which the accused forwarded to the Revenue-authorities, held that the accused fulfilled the trust reps sed in him by Government, and that his mere retention of the money for a time, in the absence of any evidence of dishonesty, did not amount to criminal breach of trust within the meaning of s. 409 of the Penal Code.—Queen-Empress v. Ganpat Tapidas, I. L. R., 10 Bom. 256. [Birdwood and Jardine, J]. Dec. 17, 1885.]

When a master entrusts his servant with money for the payment of an open account, i.e., an account of which the items have never been checked or settled, and the tradesman makes the servant, a present, and the transaction amounts to a taxation of the bill and a reduction of the price by the servant, the latter obtains the reduction for his master's benefit, the money in his hands always remains the master's property, and, if he appropriates it, he commits criminal breach of trust. But where the master himself has settled the amount with the tradesman for a specific sum, and sends the servant with the money, and the servant, after making the payment, accepts a present from the tradesman, in that case the servant does not commit criminal breach of trust, inasmuch as the money is given to him by a person whom he believes to have a right to give it, though it may be that, according to the strict equitable doctrines of the Court of Chancery, he is bound to account to the master for the money. Hay's Case [In re Canadian Oil Works Corpora-

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SECS. 410, 411.

tion (L. R., 10 Ch. Ap. 393)] referred to. Where the Court of Session had tried, convicted, and sentenced an accused person under s. 409 of the Penal Code, and the High Court was of opinion that the conviction was not sustainable under the section, that Court refused to alter the finding, under s. 423 of the Criminal Procedure Code, to a conviction for some other offence for which the accused had not been changed or tried. Observations on the necessity of requiring corroboration, in material particulars, of the evidence of an accomplice. Empress v. Ram Saran (Weekly Notes, 1885, p. 311) referred to.—Queen-Empress v. Imdad Khan, J. L. R., 8 All. 120. [Petheram, C.J. Dec. 21, 1885]

OF THE RECEIVING OF STOLEN PROPERTY.

410. Property the possession whereof has been transferred by theft or

by extortion, or by robbery, and property. which perty be this has been criminally misappropriated, or in respect

the design of which the criminal breach of trust has been committed, is designated as stolen

property, "whether the transfer has been made, or the misaboropriation." property, "whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India." + but if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

> A PERSON was convicted and sentenced under s. 411 of the Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. was found that, at the time of the alleged misappropriation, the bull had been set at large . by some Hindu, in accordance with Hindu religious usage, at the time of performing funeral ceremonies. Held that the bull was not, at the time of the alleged misappropriation, "property" within the meaning of the Penal Code, inasmuch as, not only was it set the subject of ownership by any person, but the original owner had surrendered all'ais rights as its proprietor; that it was therefore nullius proprietas, and incapable of larceny being v. Bandhu, I. L. R., 8 All. 51. [Straight,]. Dec. 7, 1885.]

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen Dishonestly receiving stolen or Mag. of 1st property, shall be punished with imprisonment of property. either description for a term which may extend to three years, or with fine, or with both.

> CHARGE.—That you, of or about the , at dishonestly received , knowing or having reason to believe the same to be stolen property, and that you thereby committed an offence punishable under s. 411 of the Indian Penal Code, and within, &c. A CHARGE, under s. 411 of the Penal Code, of dishonestly receiving stolen property,

> should state that the articles found in possession of the accused were the property of A B, the owner thereof.—Reg. v. SIDDUBIN BALNATH, I Bom. H. C. R. 95. [Forbes, Erskine. and Westropp, JJ. Nov. 18, 1863.]

> A PERSON convicted of, and sentenced for, dacoity, cannot also be convicted of, and sentenced for, receiving or retaining the stolen property thereby acquired (Loch, J., dissentiente).—IN THE MATTER OF BHYRUB SEAL, W. R., Sp., 27. [Loch, Steer, and Glover, May 2, 1864.]

> WHEN stolen property is found in the possession of dacoits, the offence of "thousingly having in possession" is to be considered as included in the original one of dacoity, unless there are circumstances clearly separating the one crime from the other, e. g. length of time or distance.—QUEEN v. ABDOOL HOSSEIN, 1 W. R. 48. [Kemp and Glover, JJ. Dec. 22, 1864.

Ct. of Ses., Presy. Mag.

or 2nd class.

Cognizable. Warrant.

Not bailable. Not comp

^{*} The words, "the offence of," have been repealed by Act VIII. of 1882, s. 9. † The words quoted have been inserted by Act VIII. of 1882, s. 9.

THE theft and the taking or retention of stolen goods form one and the same offence, and cannot be punished separately.—QUEEN v. SREEMUNT ADUP, 2 W. R. 63. [Glover, J. April 19, 1865.]

WHEN persons are found within six hours of the commission of a dacoity with portions of the plundered property in their possession, the presumption of law is that they are participators in the dacoity, and not merely receivers.—QUEEN v. CASSY MUL, 3 W. R. 10. [Glover,]. May 6, 1865.]

WHEN a prisoner as apprehended eight days after a dacoity with part of the plunder in his possession, there is as good ground for charging him with the dacoity as with having received or retained with guilty knowledge, and he ought to be charged in the alternative form. Queen v. Motee Jolaha, 5 W. R. 66. [Jackson, J. April 9, 1866.]

THE prisoner, who, having received stolen property, concealed it in his house, could sot be charged and convicted for two offences, vis., of having dishonestly received stolen property under s. 411, and of assisting in the concealment of stolen property under s. 414, which applies to persons whose dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it.—Govr. v. MUSSAMMAT NOWLIA, b. Agra H. C. R. 9. [Pearson and Spankie, Offg.]]. Aug. 1, 1866.]

EVIDENCE of guilty knowledge is necessary to a conviction on a charge of dishonestly retaining stolen property.—Queen v. Doyal Shillydar, 6 W. R. 87. [Loch and Macpherson, JJ. Dec. 3, 1866.]

IN order to sustain a conviction under s. 412 of the Penal Code of receiving property stolen at a dacoity, it is necessary to prove that the prisoner knew, or had reason to believe, that decoity had been committed, or that the persons from whom he acquired the property were dacoits.—Queen v. Jogeshur Bagdee, 7 W. R. 73 [Norman, Seton-Karr, and Hobhouse, J]. May 28, 1867.]

RECOGNITION of things not before the eyes of deposing witnesses is not evidence against a person accused of having been in possession of those things.—QUEEN v. MUSSAMUT JOOMNEE, 8 W. R. 16. [Kemp and Glover, J]. June 17, 1867.]

THE police may, without any formal complaint, apprehend any person found with stolen property. They have also the power of searching any house suspected of containing stolen property.—QUEEN v. GOWREE SINGH, 8 W. R. 28. [Loch, J. June 26, 1867.]

To support a conviction for receiving or possessing stolen property, there must be proof (1) that the property was of the description "stolen," and (2) that accused was in possession with a guilty knowledge.—Crown v. Eshur Singh, Panj. Rec., No. 8 of 1867, and the same case, Panj. Rec., No. 13 of 1867.

Where loss is occasioned to a person whose property has been stolen, it is not illegal for the wying Magistrate to award a portion of the fine inflicted on the accused as amends to the owner of such property, although the stolen property is recovered and restored to the owner—Reg. v. Yessappa bin Ningappa, 5 Bom. H. C. R. 41. [Newton, Offg. C. J., and Tucker,]. May 20, 1868.]

Accused was employed by the Panjab Bank as its treasurer at Multan. After serving for a few days in that capacity, he, with the consent of the Bank, put in one D as his agent or gomashta, himself removing to other employment at Amritsar, but continuing to receive pay from the Bank. D misappropriated certain moneys of the Bank, and finally absconded. The Sessions Court found that accused had received some of the misappropriated money from D, and had connived at D's defalcation; and convicted him of criminal breach, of trust as a servant, and of abetting the same. In appeal it was coatended for the accused, inter alid, that he was treasurer only in name, and had no dominion over the misappeapriated property; consequently he was not a participator in reference to D's defalcation; and, as to the latter, he was the servant of the accused, not of the Bank, so that, whatever his offence, he had not committed breach of trust as a servant. Found by the Chief Court that both accused and D were servants of the Bank, that D had committed breach of trust as such, and that accused had received the misappropriated money from D with a guilty knowledge. On the question whether this amounted to abetment of D's offence, or to dishonest receiving under s. 411, it was held that although no act done by accused after D's offence was committed would make the former guilty as an abettor, yet as accused, who, as the Bank's treasurer, was bound to disclose the fact that he had irregularly received the Bank's money on the first defalcation, did

not do so, he was guilty of an illegal omission, by which he voluntarily caused the safe abstraction and transmission to himself of the second sum, and had thereby abetted the breach of trust by a servant.—KALOO RAM v. CROWN, Panj. Rec., No. 20 of 1868.

THE offence of dishonest retention of stolen property under s. 411 of the Penal Code, may be complete without any guilty knowledge at the time of receipt.—Pro., April 6, 1869, 4 Mad. H. C. R., Ap., 42.

Where property sufficiently identified to be the property of one person is found to be in the possession of another person without leave or license, or any legal permission of the owner, it is for the party, in whose possession the property is found, daly to account for its possession, and, unless he can do so, a jury might fairly infer in such circumstances that it was with a guilty knowledge that the prisoner took that which he knew to be not his own.—QUEEN v. SHRUFFOODDEEN, 13 W. R. 26. [Bayley and Glover, JJ. Feb. 14, 1870.]

The practice of dividing the facts which constitute the parts of one offence into several minor offences condemned. A person convicted of dacbity under s. 395 cannot be convicted also of dishonestly receiving stolen property under s. 411, or of receiving stolen property transferred by commission of dacbity under s. 412, when there is no evidence of the commission. Mode of treating the confession of prisoners as evidence in a case of receiving stolen property pointed out.—QUBEN v. SHAHABUT SHEKK, 13 W. R. 42. [Norman, Offg. C.]., and Bayley, J. Mar. 8, 1870.]

In a case in which the accused is charged with receiving stolen property, it must be clearly proved that he retained the property with a guilty knowledge.—In the Matter of Meer Yar Ali, 13 W. R. 70. [Bayley and Mitter, JJ. May 7, 1870.]

THERE being no evidence on the record to show that property, for the dishonestly receiving of which a prisoner had been convicted under s. 411 of the Penal Code, was actually stolen, the conviction and sentence under such section will be annulled.—QUEEN V. BULDEO PERSHAD, 2 N.-W. P. 187. [Spankie, J. May 13, 1870.]

A PRISONER cannot be convicted under s. 411 of the Penal Code for dishonestly receiving or retaining stolen property in respect of property which he himself has been convicted, under s. 409, Penal Code, of having obtained possession by committing criminal breach of trust.—QUEEN v. SHUNKER, 2 N.-W. P. 312. [Spankie, J. Aug. 5, 1870.]

A's PROPERTY was stolen and pledged by the thief to B, who received it without guilty knowledge. The Chief Court ordered the property to be restored to A under s. 132B of Act VIII. of 1869.—BHARA MULL v. CROWN, Panj. Rec., No. 37 of 1870. But see Crown v. Sawan, Panj. Rec. No. 21 of 1878, infra, p. 406.

MERE possession of stolen articles of trifling value does not warrant the premap tion that the receiver knew them to have been the proceeds of a dacoity, or had accept them from one whom he knew or believed to be a dacoit.—QUEEN v. Samiruddin, 18 R. 25. [Kemp and Glover, JJ. July 3, 1872.]

A CONVICTION of an offence under s. 411 of the Penal Code was set aside in the absence of evidence on the record that the property was Government property, that it was stolen property, or that the accused knew, or had reason to believe, it was stolen—QUEEN v. DUSSORUT DASS, 18 W. R. 63. [Kemp and Pontiex.]]. Nov. 18, 1872.]

UNLESS the sale take place in market overt (as explained in s. 13, para. 7, Panjab

UNLESS the sale take place in market overt (as explained in s. 13, para. 7, Panjab Civil Code), a bond-fide purchaser of stolen property acquires no title to it. He must restore the property to the original owner, looking to the seller for his remedy.—Caown v. Gurdit Singh, Panj. Rec., No. 7 of 1872.

WHERE a person was charged under s. 411 of the Penal Code with having received stolen property (rubber, the produce of the Government forests at Cachar), and it was not proved that the rubber came from the Government forests, or that it was stolen property, and that the prisoner knew that it was stolen property, it was field that the condition under s. 411 was bad, and that he could not be convicted of smuggling, smuggling fadian rubber not being an offence under the Penal Code—Queen v. Bajo Huri, 19 W. R. 37. [Couch, C.]., and Glover, J. Feb. 20, 1873.]

The only evidence of the receipt of stolen property by swife was the fact that the property was found in the house where she lived with her husband. Held that that constituted the possession of the husband rather than that of the wife.—Queen v. Design. 5 N.-W. P. 120. [Jardine, J. April 19, 1873.]

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IN a case in which the accused was charged with having stolen a pony, the Magistrate seatenced the accused to imprisonment, and awarded a fine of Rs. 25, which he ordered, should, if realized, be paid over to the complainant, directing at the same time that the pony should be restored to a third party, by whom it had been purchased bond fide at a public sale, the Magistrate-relying on s. 418, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 517, new Code of Criminal Procedure (Act X. of 1882), and on the rule of English law protecting a bond-fide purchaser in market overt. The Sessions Judge considered that s. 418 of the Code of 1872 (or s. 517 of the Code of 1882) was not intended to supersede s. 108, *Act IX. of 1872, and that, as under the latter law the property in the pony did not pass to the third party (purchaser), the pony should have been restored to the prosecutor. Held that the fine of Rs. 25 imposed upon the prisoner could not be paid over to the complainant, either under s. 418 of the Code of 1872 (i. e., s. 517 of the Code of 1882), or under any supposed rule of law relating to sales in market overt, and that, if any such order could be made, it would be under s. 308 of the Code of 1872 (or s. 545 of the Code of 1882). The order, so far as it directed that the fine be paid to the complainant, was accordingly set aside.—Nobokristo Acharjer v. Lall Chand Sheikh, 20 W. R. 38. [Markby and Birch, J]. June 19, 1873]

PROPERTY suspected of being stolen may be confiscated under s. 418 of Act X. of 1872 (corresponding with s. 517 of Act X. of 1882), although the person charged with stealing it is discharged.—PHULLA SINGH v. RAM SINGH, Panj. Rec., No. 20 of 1873.

THE accused were found in possession of stolen property, the produce of several separate thefts. *Held* that they could not be convicted of several separate acts of receiving unless there was evidence that they did not receive all the property at one and the same time.—Crown v. Rampershad, Panj. Rec., No. 5 of 1874.

Possession of property which has been stolen from the owner is generally at best only evidence of theft when the date of the theft is so recent as to make it reasonable to presume in the absence of explanation that the person in whose possession the property is found must have obtained the possession by stealing.—Queen v. Poromeshur Aheer, 23 W. P. 16. [Phear and Morris, J]. Jan. 8, 1875.]

Money obtained upon forged money-orders is not "stolen property" within the definition thereof given in the Penal Code, s. 410.—QUEEN v. MON MOHUN ROY, 24 W. R. 33. [Birch and Lawford, JJ. July 26, 1875.]

THE goods received must be the identical goods which were stolen, and not something for which they had been sold or exchanged. Where A stole six notes for £100, and changed them into notes for £20, some of which he gave to B it was ruled that B could not be convicted of receiving, as he had not received the notes which were stolen.—R. v. W. 222, 4 C. & P. 132; Arch., 20th ed., p. 496.

Not only must it be shown that the property was originally stolen property, but also not it continued in that state at the time of the receipt. In one case goods had been stolen, and, when the thief was detected, they were taken from him, and then restored by the own s consent, that he might sell them to a person who had been in the habit of buying his booty. When the latter was indicted as a receiver, it was held that he could not be convicted, inasmuch as at the time of the receipt the goods were not stolen goods.—Reg. v. Dolan, 24 L. J., M. C., 59; Dears 436; See Reg. v. Schmidt, I L. R., C. C., 15.

WHERE stolen property is found with a person who admits having received it, it may be fairly presumed that the receipt was a dishonest one, unless the receiver's conduct is satisfactorily explained.—In the Matter of Ramjoy Kurmokar, 25 W. R. 10. [Macpherson, Glover, and Mitter, JJ. Jan. 6, 1876.]

ALTHOUGH a person who is convicted of theft cannot, in respect of the same property, be convicted at the same time of receiving stolen property, yet a person who is acquitted of the theft of any property, or who is not charged with stealing it, may, in respect of the identical property, be charged with, and convicted of, receiving it, knowing it to be stolen; so that the mere fact of a person's having once been acquitted of the charge of stealing any property does not of itself prevent his trial at any future time on the charge of receiving the same property knowing it to be stolen.—Queen v. Nyaz Ali, 25 W. R. 47. [Kemp and Glover, J]. May 25, 1876.]

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^{**} For s. 108, Act IX. of 1872 (Contract Act), and Annotations thereon, see infra. p. 411.

A MAGISTRATE has jurisdiction under s. 418. Act X. of 1872 (corresponding with s. 517. Act X. of 1882), to deal with property stolen in British territory, flowithstanding that it may be seized in foreign territory, and brought into British territory by the polica.—Mussammat Kishen Kour v. Crown, Panj. Rec., No. 20 of 1878.

In a summary proceeding under s. 418 of the Criminal Procedure Code (corresponding with s. 260, Act X. of 1882), where stolen property is in the possession of a bond fide purchaser, the proper order for a Magistrate to pass is to leave the property in the perchaser's possession, leaving the complainant to take such steps as he may think proper to establish his title as owner, and recover possession from the purchaser.—CROWN 9. SAWAN, Panj. Rec., No. 21 of 1878.

THE mere being in possession of stolen property dishonestly without, a guilty knowledge is not a substantive offence. It is an offence under s. 411 to dishonestly receive stolen property knowing or having reason to know the same to be stolen property, or to dishonestly retain it with the like knowledge. To support a conviction of dishonestly retaining stolen property, it ought to be shown that the accused, being in innocent possession of the property, acquired the knowledge that it was stolen, and thereafter retained it dishonestly. When a person is shown to stand in such a relation to stolen property as falls short of possession by him of such property, his manner of dealing with the property may warrant a charge of assisting in concealing or disposing of or making away with the property with a guilty knowledge, that is a charge of an offence under s. 414.—Khona v. Empress, Pani. Rec., No. 31 of 1879.

A HINDU, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family, he lived in commensality with it, but he did not treat such property as joint family-property, but as his own property. Held that such property was his sole property, and his brother was not a joint-owner of it, and could properly be convicted of theft in respect of it. It is irregular to convict and punish apperson for abetment of theft, and at the same time to convict and punish him for receiving the stolen property.—EMPRESS v. SITA RAM RAI, I. L. R., 3 All. 181. [Straight, J. Aug. 16, 1890]

The word "believe" in s. 414 of the Penal Code is much stronger than the word "suspect," and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing was stolen property. It is not sufficient in such a case to show that the accessed person was careless, or that he had reason to suspect that the property was stolen that the did not make sufficient inquiry to ascertain whether it had been honestly acquired EMPRESS v. RANGO TIMAJI, I. L. R., 6 Bom. 402. [Melvill and Nanabhai Haridan]. Dec. 21, 1880.] A full report of this case is reproduced at p. 417, infra.

WHERE the accused, a foreigner, was found in foreign territory in possession of stolen property, but it is not shown that he was one of those who had committed the theft? or that he had possession of the property in British territory, held that a conviction under s. 411 was not sustainable. Mussammat Kishen Kour v. Crown (Panj. Rec., No. 20 of 1870) cited and followed.—HAZAR MIR v. EMPRESS, Panj. Rec., No. 16 of 1880.

The prisoner was tried at Bombay, under s. 411 of the Penal Code, on a charge of having dishonestly received and retained stolen property, knowing or having reason to believe the same to be stolen property. He was also charged, under ss. 108 [expl. 3] and 109, with having abetted that offence. It appeared at the trial that the prisoner was a clerk in the employment of a mercantile firm at Port Louis, in the Island of Mauritius. On the 29th October and the 1st November 1879, certain letters addressed by the firm to their commission-agent at Bombay were abstracted from the post-office at Port Louis. The letters contained six bills of exchange belonging to the firm for an aggregate amount of Rs. 26,550. On the 1st November 1875, the prisoner sent all six bills of exchange in tetre to the manager of a bank at Bombay, requesting that the several amounts might be collected on the prisoner's own account, and remitted to him by bills on Mauritius. The sums were accordingly realized by the bank, and duly remitted to the prisoner. It was not denied that the prisoner obtained possession of the money, and used it as his own. His defence was that the bills had been given to him in payment of a debt. The prisoner was convicted on all the charges; but, the jurisdiction of the Court having been challenged on his behalf, the question was reserved. Held per Sargent and Melvill. JJ. (West, J., dis-

sentiente), "that the bills of exchange, having been stolen at Mauritius, in which island the Penal Code is not in force, could not be regarded as 'stolen property' within the provisions of s. 410, 30 as to render the person receiving them at Bombay liable under s. 411; that the High Court of Bombay had, therefore, no jurisdiction; and that the conviction must be quashed." Previously to the trial at the Sessions the prisoner had applied to the Court for commissions to Pondicherry and Mauritius to take evidence on his behalf. The application was refused, on the ground that the High Court had no authority to issue a commission in such a gase, but the learned Judge (West, J.) reserved the question for the full Court. Held that the High Court had no power to issue a commission out of the jurisdiction in a criminal case on an application by the accused.—Empress v. S. Moorga Chetty, I. L. R., 5 Bom. 338. [Sargent, Melvill, and West, JJ. May 3, 1881.]

A PRISONER cannot be tried at the same trial for receiving or retaining (s. 411, Penal Code), and habitually receiving or dealing in (s. 443), stolen property. The proper course 413 is to try the accused first for the offences under s. 411, and, if he is convicted, to try him under s. 413, putting in evidence the previous convictions under s. 411, and proving the finding of the rest of the property in respect of which no separate charge under s. 411 could be used to rtried by reason of the provisions of s. 453 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 234 of the new Code of Criminal Procedure (Act X. of 1882).—In the Matter of Uttom Koondoo: Empress v. Uttom Koondoo, I. L. R., 8 Cal. 634; 10 C. L. R. 466. [McDonell and Field, JJ. Mar. 31, 1882.]

In considering whether the possession of stolen goods raises a presumption of dishonest receipt of stolen property, the attention of the jury should be drawn to the necessity of satisfying themselves that the possession is clearly traced to the accused. The fact of stolen property being found concealed in a man's house would be sufficient to raise a presumption that he knew the property to be stolen property, but it would not be sufficient to show that it had been acquired by dacoity.—EMPRESS v. MALHARI, I. L. R., 7 Bom. 731.

[Melvill and Pinhey, J]. Oct. 11, 1882.]

THE fact that a child has been tried for theft and discharged under s. 215 of the Code of Criminal Procedure, 1872 (corresponding with s. 253 of the new Code of Criminal Procedure, 1882), on the ground of want of understanding within the meaning of s. 82 of the Penal Code, is no bar to the conviction of a person charged under s. 411 of the Penal Code with receiving the property alleged to have been stolen.—QUEEN v. KRISHNA, I. L. R., 6 Mad. 373. [Kernan and Muttusami Ayyar, J]. April 24, 1883.]

WHERE a person is accused of an offence under s. 411 of the Penal Code, he cannot, where the circumstances do not raise the presumption that he received the property knowing it to be stolen, be convicted of that offence merely because he is in possession of the property, and does not account for his possession. The prosecution must prove both that the property was stolen, and that the accused received it dishonestly. At the trial of a person for an offence under s. 411 of the Penal Code, the Court of Session, under s. 33 of the Evidence Act, 1872, used against the accused the evidence of the owner of the pro-perty in respect of which the accused was charged and of his wife taken by commission during the inquiry, and the evidence of the servant of those persons taken at the inquiry, and also the evidence of the owner of the property taken during the trial under a commission issued by the Sessions Judge under s. 503 of the Criminal Procedure Code. The grounds upon which the Sessions Judge admitted the evidence taken during the inquiry were, that the attendance of the witnesses could not be procured without an expense of Rs. 500, an amount which he considered unreasonable, that the witnesses would be inconvenienced, and that their evidence did not concern the accused personally, having reference only to the identification of the property in respect of which the accused was charged. Held that the Sessions Judge had improperly admitted such evidence. Inconvenience to witnesses is no ground allowed under s. 33 of the Evidence Act, and the question of identification was a most material one, and the evidence of the witnesses in question was of the utmost moment, the whole case resting on it; and, as regards the ground of expense, it was impossible to consider the amount unreasonable, considering that the entire case rested on the evidence of those witnesses, and that the accused had not cross-examined those whose evidence had been taken by commission, nor, looking at his position, could he arrauge for their cross-examination. Held also that on similar grounds the Sessions Judge was not justified in issuing a commission under s. 503 of the Criminal Procedure Code.—ENPRESS V. BURKE (T.), I. L. R., 6 All. 224. [Oldfield, J. Feb. 16, 1884.]

A SESSIONS JUDGE cannot tender a pardon to an accused under s. 338 of the Code of Criminal Procedure (Act X. of 1882), where the offence for which he has been committed

is not triable exclusively by the Court of Session, such as an offence under s. 411 of the Penal Code.—Empress v. Sadhee Kasal, I. L. R, 10 Cal. 936. [Printer and Macpherson, JJ. July 1, 1884.]

A COMMON brass drinking cup was stolen in October 1883, and was discovered in the possession of the accused in September 1884. Held, in a case in which the accused was tried for receiving stolen property, that his possession of the stolen property coupled with the fact that he had failed to give an account as to how he become possessed of the property, would, under ordinary circumstances, raise a probable presumption of his guik, but where, as in this case, such possession was not a recent possession, but one eleven months subsequent to the act of theft, the presumption against him was so slight that, taken by itself, he ought not to be called upon to explain how his possession was acquired. The question of what is or is not a recent possession of stolen property is to be considered with reference to the nature of the article stolen. Rex v. Adam (3 C. & P. 600), Rex v. Cooper (3 C. & P. 318), Rex v. Partridge (7 C. & P. 551) followed —INA SHEIKEN v. Queen-Empress, I. L. R., II Cal. 160. [Mitter and Norris, J]. Jan. 7, 1885.]

The civil station at Raikot is not part of British India within the meaning of Stat. 21 and 22 Vic., c. 106. Where the accused, a subject of a Native State, committed there at Rajkot Civil Station, and was found in possession of the stolen property at Thana, held that, as the offence was committed in British India, and as the accused was the subject of a Native State, the Sessions Court at Thana had no jurisdiction to try the accused for theft under s. 381 of the Penal Code. But it was competent to try him for dishonest retention of stolen property under s. 410 of the Penal Code as amended by Act VIII. of 1882.—Queen-Empress v. Abdul Latib valad Abdul Rahiman, I. L. R., 10 Born. 186.

[Birdwood and Jardine, J]. Nov. 24, 1885.

A PERSON was convicted and sentenced under s. 411 of the Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. It was found that, at the time of the alleged misappropriation, the bull had been set at large by some Hindu, in accordance with Hindu religious usage, at the time of performing funeral ceremonies. Held that the bull was not, at the time of the alleged misappropriation, "property" within the meaning of the Penal Code, inasmuch as, not only was it not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor; that it was therefore nullius proprietas and incapable of larceny being committed in respect of it; and that the conviction must be set aside.—QUEEN-EMPRESS v. BANDHU, I. L. R., 8 All. 51. [Straight, J. Dec. 7, 1885.]

A Hindu who, upon the death of a relative, dedicates or lets loose a bull, in accordance with Hindu religious usage, as a pious act for the benefit of the soul of the deceased thereby surrenders and abandons all proprietary rights in the animal, which thereafter is not "property" which is capable of being made the subject of dishonest receipt or possession within the meaning of ss \$10 and \$411\$ of the Penal Code.—Queen-Empress v. Basdau (I. L. R., 8 All. 51) and Queen-Empress v. Famura (Weekly Notes, 1884, p. 87) referred to.—Queen-Empress v. Nihal, I. L. R., § All. 348. [Straight,].—Jan., 1887.]

A PERSON convicted under ss. 411-75 of the Penal Code is not convicted of "distinct offences" within the meaning of s. 35 of the Criminal Procedure Code. Queen-Empress v. Zor Singh (I. L. R., 10 All. 146) explained. Where an offence under s. 411 read with s. 75 of the Penal Code appears to be deserving of a greater punishment than the Magistrate trying it can award, the best course for him to adopt is to commit the accused for trial to the Court of Session.—Queen-Empress v. Khalak, I. L. R., 11 Alle 393. [Broghurst,]. May 3, 1889.]

To constitute the offence of receiving stolen property, there must be some proof that some person other than the accused had possession of the property before the accused got possession of it. The judgment of the Court (Prinsep and Pigott, 1) was as follows: "The prisoners are convicted of dishonestly receiving stolen property, first, under s. 411, in respect of the goods belonging to one person, and, second, in respect of goods belonging to another. They were separately tried, and sentenced on each of these charges. There is no proof against them save the fact that the goods found in their possession were sold from different persons, and were found in their possession under such circumstances of the prove a guilty knowledge on their part. There is no proof as to their receipt of the goods inothing to show that they receive them at different times or from different persons. All the goods in the possession of each prisoner may have been stolen by the same time, although stolen on

different occasions. If each prisoner received the goods found in his possession together at the same time, that would constitute only one offence. There is nothing in the fact that the goods were stolen at different times to constitute by itself proof that they were received at different times, or under such circumstances as to show that more than one offence was committed in receiving them. It need not be considered whether, if a thief brought to a receiver, say, a coat and a ring, stolen from different persons, and on the same occasion gave them to the receiver, if he said, 'Here is a coat stolen from H; take this,' and the receiver took it; and also, 'Here is a ring stolen from B; take this,' and the receiver took it, these acts would or would not constitute different offences, because there is nothing to show that such a case existed here. Here there is nothing but possession of stolen roperty found concealed established; and this is consistent with only one offence having been committed, so far as receiving is concerned; but, in truth, the offence proved is only the retaining of stolen goods. In this case, as observed, there is no proof of actual receiving; and it has been held in England (2 Russell on Crimes citing R. v. Cordy) that to constitute the offence of receiving there must be some proof that some person other than the prisoner had possession of the goods before the prisoner got possession of them; otherwise possession of them is only proof of the stealing, which is not found here.* If this rule prevails under the Penal Code (and we see no reason why it should not), the prisoners should have been convicted of the retention of stolen goods, knowing, or having reason to believe, that they were stolen, of the existence of which knowledge their concealment of the goods was evidence. We therefore set aside the conviction in the second trial. The first conviction in the first case we also set aside, and, in lieu thereof, we convict the prisoners under the same section (411) of dishonestly retaining stolen property, and sentence the prisoners on the findings in the first case, Ishan to four years, Ananda to six years, and Cushte to two years, all in rigorous imprisonment."-ISHAN MUCHI v. QUEEN-EMPRESS, I. L. R., 15 Cal. 511. [Prinsep and Pigott, J]. Feb. 21, 1888.]

The accused were charged with retaining stolen property under s 411 of the Penal Code (Act XLV. of 1860). The Sessions Judge, in his charge to the jury, merely directed them to find whether the property was stolen, and whether it was retained by the accused. Held that the charge was defective, and amounted to a misdirection. The Sessions Judge should have directed the jury to find (1) whether the property was stolen, (2) whether it was dishonestly retained, and (3) whether the accused knew, or had reason to believe, the same to be stolen property. Unless these questions were found by the jury in the affirmative, the accused could not legally be convicted of an offence under s. 411 of the Penal Code.—Queen-Empress v. Balva Somya, I. L. R., 15 Bom. 369. [Birdwood and Parsons, J]. Oct. 9, 1890.]

A PERSON cannot be said to be an habitual receiver of stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day. In order to support a conviction under s. 413 of the Penal Code of being an habitual receiver of stolen property, it must be shown that the property was received on different occasions and on different dates.—QUEEN-EMPRESS v. BABURAM KANSARI, I. L. R., 19 Carigo. [Norris and Beverley, JJ. Nov. 12, 1891.]

Where a person was found in possession of stolen property identified as belonging to different owners, but it did not appear that he had received such property at different times, held that such person could not properly be tried and convicted under s. 411 of the Penal Code separately in respect of the property identified by each owner. Ishan Muchiv. The Queen-Empress (I. L. R., 15 Cal. 511) approved.—Queen-Empress v. Makhan, I. L. R., 15 All. 317. [Aikman, J. April 29, 1893.]

Where a document, purporting to be a Collectorate notice forming part of a record, and found by the Court to be genuine, was discovered to be in the possession of persons charged with retaining stolen property, it was held that, in a matter of this kind, it was right to raise legal presumptions arising out of the ordinary course of business, and to dispends with direct evidence of the document having been actually on the record or stolen from it. Though it be true that, before a man can be convicted of receiving stolen property knowing it to be stolen, it must be shown that property has been stolen, held that the disappearance of the document from the record, plus the substitution of an imitation

^{*} See the case of Empress v. Uttom Koondoo, I. L. R., 8 Cal. 634, where, however, the point does not seem to have been taken.—En. Vide ruling under s. 413.

of it in its place, showed that it must have been taken with a dishonest object.—ISHAN CHANDRA CHANDRA v. QUEEN-EMPRESS, I. L. R., 21 Cal. 328. [Trevelyan and Rampini, JJ. Nov. 22, 1893.]

A CHARGE of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.—Crim. Pro. Code (Act X. of 1882), s. 480, ill. b.

SEVERAL stolen sacks of corn are made over to A and B, swho know they are giolen property, for the purpose of concealing them. A and B, therefore, voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under ss. 411 and 414 of the Penal Code.—Crim. Pro. Code (Act X. of 1882), s. 235, ill. f.

THE offence of receiving or retaining stolen property under s. 411 of the Penal Code may be tried summarily by (1) the District Magistrate; (2) any Magistrate of the first class specially empowered in this behalf by the Local Government; and (3) any Bench of Magistrates invested with the powers of a Magistrate of the first class, and specially empowered in this behalf by the Local Government.—Crim. Pro. Code (Act X. of 1882), s. 260.

A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article. The fact that at the same time he was in possession of many other particular stolen articles, is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.—Evidence Act (1. of 1872), s. 14, ill. a.

A is accused of receiving stolen goods knowing them to be stolen. He offers to prove that he refused to sell them below their value. A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.—
Evidence Act (I. of 1872), s. 21, ill. d.

A is accused of receiving stolen property knowing it to have been stolen. It is proposed to prove that he denied the possession of the property. The relevancy of the denial depends on the identity of the property. The Court may, in its disgrettos, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.—Evidence Act (L. of 1872), s. 136, ill. v.

When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it, regarding which any offence appears to have been committed, or which has been used for the commission of any offence. When a High Court or a Court of Session makes such order, and cannot, through its own officers, conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate. When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is livestock, or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of. Explanation.—In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.—Crim. Pro. Code (Act X. of 1882), s. 517.

To assist a Court in making a proper order for the disposal of property under s. 517 of the Criminal Procedure Code (Act X. of 1882), it has been thought becessary to reproduce s. 108 of the Contract Act (IX. of 1872), which runs as follows:—

Title conveyed by seller of goods to buyer.

108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases:—

Exception 1.—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, what finger's certificate, or warrant or order for delivery, or other document showing title to goods, be

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may transfer the ownership of the goods of which he is so in possession, or to which such decembers relate, to any other person, and give such person a good title thereto not with standing any instructions of the owner to the contrary: Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

Exception 2.—If one of several joint-owners of goods has the sole possession of them by the parmission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint-owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

Reception 37—When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person who, before the contract is rescinded, buys them in good faith of the person in possession; unless the circumstances which rendered the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations.

- (a.) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.
- (6.) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.
- . (c.) A sells to B goods of which he has the bill of lading, but the bill of lading is made outfor delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.
- (d.) A, B, and C, are joint Hindu brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases bond fide. The property in the cow is transferred to D.
- (e) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.
- (f.) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and, before B rescinds the contract, sells the horse to C. The property is not transferred to C.

AMOUTATIONS ON S. 108 OF THE CONTRACT ACT WITH REFERENCE TO STOLEN PROPERTY.

. S. to was proposed by the Select Committee of the Legislative Council, and adopted by the Council in lieu of one prepared by the Indian Law Commissioners, by which was proposed to confer upon every possessor of moveable property the power of making a good title to a bond-fide purchaser. The following passage from the report of the Law Commissioners gives their reasons for this proposal:—

"With regard to goods sold by a person who has no right to sell them, the general rule of English law is that the owner of the goods retains the ownership notwithstanding his having lost the possession of them, and their having been sold to a third person. But from this rule there is an exception in the case of goods sold in open market, an

expression which, by the custom of London, applies to every shop within the city.

"It cannot be denied that the subject is difficult. We have to consider, on the one hand, the hardship suffered by an innocent person who loses in this way his right to recover what was his undoubted property. But, on the other hand, still greater weight appears to us to be due to the hardship which a bond-fide purchaser would suffer were he to be deprived of what he bought. The former is very often justly chargeable with remissness or negligence in the custody of the property. The conduct of the latter has been blameless. The balance of equitable consideration is, therefore, on the side of a rule favourable to the purchaser; and we think . that sound policy with respect to the inter-

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Annotations on s. 108 of the Contract Act-contd.

ests of commerce points to the same con-

"We have, therefore, provided that the ownership of goods may be acquired by buying them from any person who is in possession of them, if the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession has no right to sell them."

The reasons of the Select Committee of the Legislative Council for the opposite

view were as follow:-

"The first question is whether the law ought to proceed upon the assumption that a person whose property had been stolen is

negligent.
"Thefts are commonly effected in one of three ways, by force, by fraud, or by a breach of confidence. It appears to us that, in each of these cases, it would be improper to speak of the person who lost the property as neg-

" A man is stripped of all his property by robbers, and nearly murdered for defending himself. Is he negligent? A gang of thieves enter a house unperceived, by digging through the wall at night, and carry off the property contained in it. Are the owners of the house negligent? A servant steals plate under his charge. Cattle left by night on an open pasture, or crops not specially watched by night, are stolen. Are the owners in these cases negligent? These are typical instances of the commonest forms of theft; and it appeared to us that, in comparison with them, the cases in which an owner is really negligent-as, for instance, where a man leaves valuable property unwatched in a public place—are of very rare occurrence. We therefore regarded innocence on the part of the owner as the rule, and negligence as the exception.

" Assuming, then, that the common case is that in which both the owner and the purchaser of the stolen goods are innocent, upon whom ought the loss to fall? We thought it ought to fall upon the purchaser for the

following reasons:

" 1st. The only argument offered in support of the suggestion that it should fall upon the original owner, assumes that every man is negligent who depends upon the protection afforded by law to his property, even when it is in his personal custody, and can be taken from him only by personal vio-We thought, on the contrary, that people have a right to expect the law to protect them against superior force, and also against fraud so gross as to amount to crime. Against fraud which amounts only to a civil

injury—as in the case of selling an article to which the vendor has no title-prudent men may be expected to protect themselves. The proposed esection reverses this. It would protect a man who has been overreached in a bargain, at the expense of another whom it regards as negligent, because he has been robbed on the highway.

"2nd. A person, who has been robbed by force, or fraud, suffers a greater injury than a person who has been over-reached in a bargain. It follows that, if an innocent purchaser is obliged to return stolen goods, he will, in most cases, suffer less than the insocent owner would suffer if the purchaser

were allowed to retain them.

" 3rd. To give thieves the legal power of effecting a change in property against the will of the true owner recognizes and favours crime. We thought that no one should be permitted to derive any benefit from a crime, even if he was mixed up with it innocestly and accidentally, and that, when such a transaction was brought in any form under the notice of the law, things should be restored, as far as possible, to the condition in which they would have been, if the crime had not been committed. The bond-fine purchase of stolen goods would derive an advantage from theft, if the suggestion of the Commissioners were adopted. Their proposal would enable a thief, whose object was revenge, to carry out his purpose by the express warrant of law,

" 4th. The proposed change would favour receivers of stolen goods. Such persons are often in outward appearance respectable. Under the proposed section, the thief would not, indeed, be able to confer a good title upon the receiver, but the receiver would be able to confer a good title upon his customers.

" 5th. If the bona fides of the purchaser is to be the test of the validity of the transfer, it will become necessary to decide, as a fact, in each particular case, whether the purchaser acted in good faith or not. We considered it undesirable to enter upon this inquiry. .

"The Commissioners' draft left open the question whether, upon the principle that the law presumes innocence, the owner is to prove the purchaser's bad faith, or whether, upon the principle that a man is bound to prove facts within his knowledge, the purchaser is to prove his own good faith. The adoption of either branch of the alternative would, we thought, be mischievous.

"If the original owner was to prove the purchaser's bad faith, receivers of stolen goods would be practically secure? How could a man, whose goods had been stolen.

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prove the circumstances under which the thief sold them? How, except by accident, could be ever be able to prove matters connected with the sale which ought to have roused the buyer's suspicions? How, in short, could be give proof of what did actually pass, or even of what ought to have passed, in another man's mind upon an occasion as to which his information must be incomplete?

"If, on the other hand, the purchaser was put to prove his good faith, how was he to do so? The common case would be, that he knew mething of the seller except that he offered the goods for sale at a moderate price. If this was enough, every receiver of stolen goods would egcape. If it was not enough, honest purchasers would, in most cases, be regarded as receivers of stolen goods. They would have to return the property which it was the object of this section to secure to them, and, in doing so, they would lose their

characters as well as their money.

"In short, it was essential to the proposed section that, for the purpose of proving a doubtful matter of fact, we should choose between two rules of evidence, of which one would discourage nonesty, and the other favour crime. This difficulty might be altogether avoided by preferring the true owner, who must have a good title, to the purchaser, who might be an undetected receiver of

stolen goods.

"6th. The proposed enactment would remove one of the greatest of the existing motives for the detection of crime man, who had lost his property by theft, was not to recover it, unless he could prove bad faith on the part of the purchaser, he would not care to prosecute the thief. in many parts of India, cattle are the most important kind of perty, and cattle-stealing is the commonest of offences. As matters now stand, stolen cattle are systematically tracked sometimes for hundreds of miles, and for weeks or months together. When discovered, the owner re-takes them. So well is this system established that there are persons who make it their profession to track stolen cattle, and that buyers take security from sellers to indemnify them if the cattle should have to be given up to their true owners. This constitutes a considerable security against cattle-thefts, but the whole system would come to an end if the owner could not recover his cattle without proving bad faith in the purchaser.

"7th. The universal practice of India is that the loss in case of theft should fall on

the purchaser. This, the Committee were informed, is the law of all the independent Native States, both within and on the border of our territories. If our law were different, British territory would become an asylum for cattle-stealers, and all the Native States would feel themselves deeply injured.

"8th. The effect of the section upon the position of bailees would be very singular, and we thought undesirable. It would invest every bailee, for whatever purpose, with the power of selling the goods bailed as he would be able to make a good title to them, and, if he offered to account for the price to the true owner, it seemed to us very doubtful whether he would be punishable for criminal breach of trust. A lodger sells the furniture of his lodgings for an inadequate sum, and pays the money to the landlord. The landlord under the proposed section would lose his property absolutely, and have no remedy at all, unless the transaction were regarded as a 'dishonest misappropriation,' which seems rather an abuse of terms. The case was not perhaps likely to happen; but, if dishonest persons were once made aware of the existence of such a law, we feared that it would be extensively used for the perpetration of frauds, which it would be very difficult to detect.

Illustration (a) was held not similar to a case in which a Government currency-note was stolen from A, and cashed by B in good faith for C, and, on the conviction of C for thest, the Magistrate ordered the note to

be returned to B.*

The law as enacted in this section has virtually been adopted in the new Factors Act, 40 and 41 Vic., c. 39. The preamble recites: "Whereas doubts have arisen with respect to the true meaning of certain provisions of the Factors Act, and it is expedient to remove such doubts and otherwise to amend the said Acts, for the better security of persons buying, or making advances on goods, or documents of title to goods, in the usual and ordinary course of mercantile business: be it enacted," &c.

S. 2 provides as follows with respect to secret revocation of entrustment or agency:—

"Where any agent or person has been entrusted with, and continues in the possession of, any goods, or documents of title to goods, within the meaning of the principal Acts as amended by this Act, any revocation of his entrustment or agency shall not prejudice or affect the title or rights of any other person who, without notice of such revocation, purchases such goods, or makes

^{*} Empress v. Joggessur Mochi, I. L. R., 3 Cal. 379.

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advances upon the faith or security of such bill of lading has for deleating the right of goods or documents."

S. 3 enacts as follows with respect to vendors permitted to retain documents of title

to goods:—
"Where any goods have been sold, and the vendor or any person on his behalf continues or is in possession of the documents of title thereto, any sale, pledge, or other disposition of the goods or documents made by such vendor or any person or agent, entrusted by the vendor with the goods or documents within the meaning of the principal Acts as amended by this Act so continuing or being in possession shall be as valid and effectual as if such vendor or person were an agent or person entrusted by the vendee with the goods or documents within the meaning of the principal Acts as amended by this Act, provided the person to whom the sale, pledge, or other disposition is made has not notice that the goods have been previously sold.

S. 4 enacts as follows with respect to vendees permitted to have possession of docu-

ments of title to goods :-

"Where any goods have been sold or contracted to be sold, and the vendee, or any person on his behalf, obtains the possession of the documents of title thereto from the vendor or his agents, any sale, pledge, or disposition of such goods or documents by such vendee so in possession, or by any other person or agent entrusted by the vendee with the documents within the meaning of the principal Acts as amended by this Act, shall be as valid and effectual as if such vendee or other person were an agent or person entrusted by the vendor with the documents within the meaning of the principal Acts as amended by this Act, provided the person to whom the sale, pledge, or other disposition is made has not notice of any lien or other right of the vendor in respect of the goods."

And s. 5 thus provides with respect to

transfers of documents of title:

"Where any document of title to goods has been lawfully indorsed or otherwise transferred to any person as a vendee or owner of the goods, and such person transfers such document by indorsement (or by delivery where the document is by custom, or by its express terms, transferable by delivery, or makes the goods deliverable to the bearer) to a person who takes the same bond fide and for valuable consideration, the lastmentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage in transitu as the transfer of a

stoppage in transitu."

The possession which is meant by the first part of excep. 1 of this section (108) is a possession which is unqualified, and not to be restricted otherwise than by the owner giving instructions to the person who has it. It is the kind of possession which a factor or agent has, where the owner of the goods, although he has parted with the possession, may give instructions to the person in possession what to do with the goods. It is such possession as an owner has; and in such a case the person selling constary to his instructions gives a title to a buyer acting in good faith. The exception does not apply where there is only a qualified pos-session, such as a hirer of goods has, or where the possession is for a specific purpose. In such a case the owner has no right to give instructions. The nature of the possession and the power of the person having it are determined by the contract of hiring or the contract under which possession was taken; and is of a different nature from the unqualified possession above mentioned, where the owner has power to give instructions. The hirer has only a qualified possession. He acquires a right of possession only for the particular period or purpose stipulated. By the Roman law, the hirst acquired no pro-By the English perty in the thing hired. law, he has only a special property during the continuance of the contract, or for the purposes expressed or implied by it. By the sale of the thing, his right of possession and his special property are both determined, and thus his possession is of quite a different character from the possession which was intended by this section, taking it as a whole.* Accordingly, where a piano had been hired from the plaintiff with an option of purchase, and the hirer sold the piano to the defendant, before he had exercised that option, it was held that the defendant was liable in frover to the plaintiff, although it was found that he acted in perfect good faith, the pe sion which was acquired by the hirer of the piano not being such a possession as v contemplated by this section.†

In England, the purchaser of a chattel takes it, as a general rule, subject to what may turn out to be informalities in the title. By a purchase in market over the title obtained is good against all the world. If not so purchased, though purchased loud fide, the title obtained may not be good against the real owner. Where the original

^{*} Greenwood & Co. v. Holquette, 20 W. R. 467; 12 B. L. R. 42.

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owner has parted with the chattel to A upon a de-facto contract, though there may be circumstances which enable that owner to set aside that contract, the bond-fide purchaser from A will obtain an indefeasible title. The question, therefore, in many such cases will be, was there a contract between the original owner and the intermediate purchaser?*

Where goods are shipped under a bill of lading drawn in parts, to be delivered to

the consignee "or his assigns, the one of which bills being accomplished, the others to stand void," the master or the warehouseman, who has the custody of the goods, is justified in delivering to the consignee on production of one part, although there has been a prior indorsement for value to the holder of another part, provided the delivery be bona-fide and without notice or knowledge of such prior indorsement.

412. Whoever dishonestly receives or retains any stolen property, the Ct. of Ses. possession thereof he knows or has reason to believe Cognizable. Dishonestly receiving proto have been transferred by the commission of da-Not bailable. perty stolen in the commission of a dacoity. coity, or dishonestly receives from a person whom Not comp. he knows or has reason to believe to belong, or to have belonged, to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

, dishonestly received stolen CHARGE.—That you, on or about the property, the possession of which you knew, or had reason to know, had been transferred by the commission of dacoity, and that you thereby committed an offence, &c.-2 W. R., Cr. L., 23, No. 352 of 1865.

A SENTENCE of transportation under ss. 412 and 59 of the Penal Code cannot exceed ten years Queen v. Mohanundo Bhundary, 5 W. R. 16. [Seton-Karr and Macpherson, []. [an. 20, 1866.]

It must be proved that the prisoner received or retained plundered property, knowing it to be plundered property, before he can be convicted under s. 412 of the Penal Code.-IN THE MATTER OF BISHOO MANJEE, 9 W. R. 16. [Jackson and Mitter, J]. Feb. 12, 1868.]

THE practice of dividing the facts which constitute the parts of one offence into several minor offences condemned. A person convicted of dacoity under s. 395, Penal Code, cannot be convicted also of dishonestly receiving stolen property under s. 411, or of receiving property transferred by commission of dacoity under s. 4 12, when there is no evidence of the commission of more than one offence. Mode of treating the confession of prisoners as evidence in a case of receiving stolen property pointed out.—Queen v. Shahabut Sheikh, 13 W. R. 42. [Norman, Offg. C.J., and Bayley, J. Mar. 8, 1870.]

MERELY being seen getting on board a boat with four persons, who have, on their own admissions, been convicted of belonging to a gang of dacoits, is not sufficient evidence against those so seen. To make an admission of guilty knowledge of the means by which money, supposed to have been acquired by dacoity, was obtained, evidence under a 150 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 26 of the Evidence Act (I. of 1872), it must be shown that the admission was antecedent to the discovery of the money.—QUEEN v. KAMAL FUKEER, 17 W. R. 50. [Couch, C.]., and Ainslie, J. April 15, 1872.]

A AND B were committed for trial, the former for dacoity under s. 395 of the Penal Code, and the latter under s. 412 for receiving stolen property, knowing it to be such, A made two confessions, and in both he stated he had handed over to B some pieces of gold and silver stolen at the dacoity. When B was arrested, a gold ring and a silver wristlet

^{*} Cundy v. Lindsay, L. R., 1 Q. B. D. 348; 2 Q. B. D. 96; 3 App. Cas. 459. † Glyn Mills & Co. v. East & West India Dock Co., L. R., 7 App. Cas. Sot; 47 L. T. 309; 31 W. R. (Eng.) 201.

were found in his possession. At the trial A pleaded guilty, and B claimed to be tried. A goldsmith deposed that he had made the ring and wristlet found with B out of pieces of gold and silver given to him for the purpose by B. On this evidence, and on the confessions made by A, the Sessions Judge convicted B. On appeal to the High Court, held that, A and B not having been tried jointly for the same offence, the confession of A was inadmissible as evidence against B. There was, therefore, no evidence of the identity of the goods stolen at the dacoity with those found in B's possession, and the case against him failed. Conviction quashed.—Empress v. Bala Patel, I. L. R., 5 Bom. 63. [Westropp, C.J., and Melvill, J. April 7, 1880.]

In considering whether the possession of stolen goods raises a presumption of dishonest receipt of stolen property, the attention of the jury should be drawn to the necessity of satisfying themselves that the possession is clearly traced to the accused. The fact of stolen property being found concealed in a man's house would be sufficient to raise a presumption that he knew the property to be stolen property, but it would not be sufficient to show that it had been acquired by dacoity.—EMPRESS v. MALHARI, I. L. R., 7 Bem. 731. [Melvill and Pinhey, J]. Oct. 11, 1882.]

CERTAIN persons, who were not proved to be British subjects, were found in possession, in a native state, of property, the subject of a dacoity committed in British India. They were not proved to have taken part in the dacoity, and there was no evidence that they had received or retained any stolen property in British India. They were convicted of offences punishable under s. 412 of the Penal Code. Held that no offence was proved to have been committed within the jurisdiction of a British Court.—Queen-Empress v. Kirpal Singh, I. L. R., 9 All. 523. [Edge, C.J., and Brodhurst, J. April 25, 1887.]

Ct. of Ses. Cognizable. Warrant. Not bailable Not comp. 418. Whoever habitually receives or deals in property which he knows

Habitually dealing in stolen or has reason to believe to be stolen property shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

A prisoner cannot be tried at the same trial for receiving or retaining (s. 411, Penal Code), and habitually receiving or dealing in (s. 413), stolen property. The proper course is to try the accused, first, for the offences under s. 411, and, if he is convicted, to try him under s. 413, putting in evidence the previous convictions under s. 411, and proving the finding of the rest of the property in respect of which no separate charge under s. 411 could be made or tried by reason of the provisions of s. 453 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 234 of the new Code of Criminal Procedure (Act X. of 1882).—In the Matter of Uttom Koondoo: Empress v. Uttom Koondoo, I. L. R., 8 Cal 634; 10 C. L. R. 466. [McDonell and Field, J]. Mar. 31, 1882.]

A PERSON cannot be said to be an habitual receiver of stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day. In order to support a conviction under s. 413 of the Penal Code of being an habitual receiver of stolen property, it must be shown that the property was received on different occasions and on different dates.—QUERN-EMPRESS v. BABURAM KANSARI, I. L. R., 19 Cal. 190. [Norris and Beverley, J]. Nov. 12, 1891.]

Ct. of Ses., Presy. Mag, or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

414. Whoever voluntarily assists in concealing or disposing of, or making
Assisting in concealment of stolen property.

away with, property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

SEVERAL stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B therefore voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under ss. 411 and 414 of the Penal Code.—Crim. Pro. Code (Act X. of 1882), s. 235, ill. j.

WHERE persons are charged with assisting in concealing or disposing of property which they know or have reason to believe to be stolen, the nature of the property, as well as the circumstances under which it was being made away with, must be taken into

asideration.—Reg. v. Harishankar Fakirbhat, 2 Bom. H. C. R. 130: [Couch and arden, J]. Mar. 16, 1865.]

A PRISONER who, having received stolen property, concealed it in his house, could to be charged and convicted for two offences, vis., of having dishonestly received then property under s. 41% of the Penal Code, and of assisting in the concealment of then property under s. 414, which applies to persons whose dealing with the stolen operty is not of such a kind as to make them guilty of dishonestly receiving or retainer it.—Govt. v. Muser. Nowlin, 1 Agra H. C. R. 9. [Pearson and Spankie, Offg.]].

Where the petitioner was convicted of having voluntarily assisted in concealing bles railway pins in a certain person's house and field with a view to having such incent person punished as an offender, held that the Magistrate was right in convicting d punishing the petitioner for the two separate offences of fabricating false evidence use to a stage of a judicial proceeding under s. 193 of the Penal Code, and of voluntity assisting in concealing stolen property under s. 414, Penal Code.—EMPRESS v. MESHAR RAI, I. L. R., I All. 379. [Spankie, J. April 23, 1877.]

The mere-being in possession of stolen property dishonestly without a guilty knowing is not a substantive offence. It is an offence under s. 411 to dishonestly receive sten property, knowing or having reason to know the same to be stolen property, or to shonestly retain it with the like knowledge. To support a conviction of dishonestly taking stolen property, it ought to be shown that the accused, being in innocent possion of the property, acquired the knowledge that it was stolen, and thereafter retained it dishonestly. When a person is shown to stand in such a relation to stolen property as falls short of possession by him of such property, his manner of dealing with the property may warrant a charge of assisting in concealing or disposing of, or making away with, the property with a guilty knowledge, that is, a charge of an offence under sylla-Khona we Empress, Panj. Rec., No. 31 of 1879.

THE word "believe" in s. 414 is much stronger than the word "suspect," and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing was stolen property. It is not sufficient in such a case to show that the accused person was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient inquiry to ascertain whether it has been honestly acquired.—Empress v. Rango Timaji, 1 L. R., 6 Bom. 402. [Melvill and Nanabhai Haridas, JJ. Dec. 21, 1880.] The following is a full report of the case:—

"This was a criminal application under the extraordinary jurisdiction of the High Court.

"On the 4th August 1880, the accused was convicted by C. Wiltshire, First-class Magistrate of Dharwar, of the offence of having voluntarily assisted in the disposal of stolen property under s. 414, and sentenced to suffer rigorous imprisonment for one year, and to pay a fine of Rs. 100, or, in default, to suffer imprisonment for six months more.

"On the 12th October 1878, a bullock was sold by one Rango, and purchased by Basalingapa, on the guarantee of the accused that it was the property of Rango. It was in evidence that the bullock belonged to one Maharudrapa, and that it had been stolen from him. In his examination before the Magistrate, the accused stated that he knew Rango, who had left his village some time ago during the famine, and gone to some other place to earn his livelihood; that Rango had told him (the accused) that he (Rango) had purchased the bullock for Rs. 16. From that statement of the accused, the Magistrate came to the conclusion that the accused knew, or had reason to believe, the bullock to be stolen property, inasmuch as he knew Rango to be so poor that the latter was obliged to leave his village in order to earn the means of his livelihood in some other place. The Magistrate accordingly convicted the accused of the offence charged. On appeal, the conviction and sentence were upheld by the Sessions Judge (A. C. Watt) of Dharwar on the 4th September 1880.

"The accused thereupon made an application to the High Court for the exercise of its extraordinary jurisdiction.

"The fligh Court (Melvill and West, JJ.) sent for the record and proceedings of the . case.

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e' On the receipt of the record and papers, the application was heard by Melvill and Nanabhai Haridas, JJ.

"Manekshah Jehangirshah for the accused.—There is no evidence in the case to show that the accused knew or had reason to believe that the bullock was stolen property There were no circumstances connected with the sale of the bullock which would induce any reasonable man to believe that it had been stolen. The lower Courts were wrong in inferring, from the acquaintance of the accused with Range and his statement in his examination, any knowledge or belief on the part of the accused that the bullock was stolen property. The facts proved in the case do not constitute the offence of which the accused has been held guilty.

"The Hon. Rao Saheb V. N. Mandlik (Acting Government Pleader) appeared on behalf of the Crown.

"The following is the judgment of the Court delivered by-

"Melvill, J.—It lay upon the prosecution in this case to prove that the accused person knew or had reason to believe that the bullock was stolen property. It was not sufficient to show that the accused was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired. The word 'believe' in s. 414, Indian Penal Code, is a very much stronger word than 'suspect,' and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property. The only circumstance alleged in the present case is that Rango, whose honesty the accused guaranteed, had left his village during the famine to earn a livelihood elsewhere. The Court fied it impossible to hold that it is a legal inference from this single circumstance that the accused had reason to believe, or, in other words, that he had sufficient reason to feel convinced, that Rango could not, during so long an interval, have acquired sufficient means to purchase a bullock of the value of Rs. 16

"On the ground, therefore, that there is no evidence on which a conviction could legally be based, the Court reversed the conviction and sentence, and ordered the fine, if paid, to be refunded."

B AND R, accused of offences under s. 414 of the Penal Code. gave information to the police which led to the discovery of the stolen property. This information was to the effect that the accused had stolen a cow and calf, and sold them to a particular person at a particular place. Held by the Full Bench (Mahmood, J., dissenting) that's. 27 of the Evidence Act is a proviso, not only to s. 26, but also to s. 25; and that, therefore, so much of the information given by the accused to the police-officer, whether amounting to a confession or not, as related distinctly to the facts thereby discovered, might be proved. Empress v. Kaurpala (Weekly Notes, 1882, p. 225) dissented from. Per Mahmood, J., that s. 27 of the Indian Evidence Act is not a proviso to s. 25, but only to s. 26, and that, therefore, the statements in question were wholly inadmissible in evidence. Empress v. Pancham (I. L. R., 4 All. 198) referred to by Straight, Offg. C.J., and Mahmood, J. Per Straight, Offg. C.J., that, where a statement is being detailed by a constable as having been made by an accused, in consequence of which he discovered a certain fact or certain facts, the strictest precision should be enjoined on the witness, so that there may be no room for mistake or misunderstanding. Observations by Straight, Offg. C.J., as to the mode in which the testimony of witnesses should be recorded in cases where two persons are being tried. Observations by Straight, Offg. C.J. and Duthoit, J., upon the acture of confessions by accused persons in India, and the circumstances in which such confessions are made.—Empress v. Babu Lal, I. L. R., 6 All. 509. [Straight, Offg. C.J., and June 30, 1884.] Oldfield, Brodhurst, Mahmood, and Duthoit, J.

making a false station and kunsungly (until OF CHEATING.

415. Whoever, by deceiving any person, fraudulently or dishonestly in-,) duces the person so deceived to deliver any pro-Cheating. perty to any person, or to consent that any person

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shall retain any property, or intentionally induces the person so deceived to

do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property, is said to "cheat."

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

- (a.) A, by falsely pretanding to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
- (b.) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that the article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.
- (c.) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.
- (d.) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.
- (e.) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.
- (f.) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.
- (g.) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo-plant which he does not intend to deliver, and thereby dishonestly in heave the duces Z to advance money upon the faith of such deliver. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo-plant, and afterwards breaks his contract, and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.
- (h.) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.
- (i.) A sells and conveys an estate to B. A, knowing that, in consequence of such sale, he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage-meney from Z. A cheats.

Rulings.

A PERSON attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be false to the District Superintendent of Police. Held that such person had not thereby committed an offence punishable under s. 177 or 188 of the Penal Code, of the offence of attempting to "cheat" within the meaning of \$,415 of the Code.—Empress v. Dwarka Prasad, I. L. R., 6 All. 67. [Tyrrell, J. Sep. 25, 1884.]

A FALSRLY represented himself to be B at a university examination, got a hall-ticket under B's name, and headed and signed answer-papers to questions with B's name. Held that A committed the offences of forgery and cheating by personation.—Queen-Empress v. Appasami, I. L. R., 12 Mad. 151. [Collins, C.J., and Parker, J. Jan. 18, 1839.]

To constitute the offence of cheating under s. 415 of the Indian Penal Code, the damage or harm caused or likely to be caused to the person deceived in mind, body, reputation, or property must be the necessary consequence of the act done by reason of the deceit practised, or must be necessarily likely to follow therefrom. Where, therefore, certain persons were charged under s. 419 of the Indian Penal Code, one with personating another, person before a Registrar, and the others with abetting such personation, and causing the Registrar to register a divorce, under the provisions of Bengal Act I. of 1876, with the wife of the personated person, and where the lower Courts convicted the accused

under that section, holding that, as such registrations were voluntary and a source of gain to the Registrar, harm was caused to the Registrar in mind and reputation by registering alse divorces, as well as by losing his fees in the future through persons being less likely to avail themselves of his services, and that, therefore, an offence under the section had been committed. Held that the possibilities contemplated by the lower Courts were too remote; that the facts did not constitute an offence under the section; and that the conviction must therefore be set aside.—Mojey v. Queen Empress, I. L. R., 17 Cal. 606. [Norris and Macpherson, J]. Mar. 18, 1890]

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In construing ss. 24 and 25 of the Penal Code, the primary and not the more remote intention of the accused must be looked at. Oueen-Empress v. Girdhari Lal (1. L. R., 8 All. 653) cited. Under the rules of the Calcutta University a private student desiring to appear at the Entrance Examination is required to forward to the Registrar, with his application for permission to appear, a certificate to the effect, interalia, that he is of good moral character, and has submitted himself to a test examination by, and furnished exercise to, the person signing the certificate sufficient in that person's opinion to show that his qualifications give a reasonable probability of his passing the examination. Such certificate has to be signed by one or other of the persons mentioned in the rules, amongst them being the head-master of a high school under public management. On such certificate being sent to the Registrar and the prescribed fee paid, that officer forwards a receipt to the candidate with his roll-number thereon, which is also an authority for him to appear at the examination, and enter the examination-hall. A private student forwarded to the Registrar, with his application for permission to appear, a certificate in the prescribed form, purporting to be signed by the head-master of a high school, such signature, however, being, as the applicant well knew, a forgery. The Registrar, knowing at the time that the signature of the head-master was not genuine, sent to the applicant the receipt for his fee and the necessary authority allowing him to appear at the examination, and in due course the applicant appeared, took his seat in the hall at the desk allotted to him, and commenced the examination. Upon charges being preferred against the applicant of using as genuine a forged document (s 471), and attempting to cheat ss. 465 and 511), held that his primary object or intention was, by falsely inducing the Registrar to believe that the certificate was signed by the head-master of a Government school under public management, to be permitted to sit for the Entrance Examination, and that such intention could not be held to be "fraudulent" or "dishonest" within the meaning of ss. 25 and 24 of the Penal Code. Held, consequently, that the use of the forged document, though with the knowledge or belief that it was forged, was not fraudulent or dishonest, and that, as these are essential elements to offences under ss. 471 and 415 of the Penal Code, the accused had not committed either of the offences charged. Held, further, that the accused had not committed any offence under the Penal Code. Fan Mahomed v. Queen-Empress (I. L. R., 10 Cal. 584) cited. In a reterence by a Presidency Magis-

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Cheating by personation.

Cheating by personation.

Cheating by personation.

Cheating by personation.

Solution

Cheating by personation.

Cheating by personation.

Solution

Cheating by personation.

Cheating by personation.

Solution

Cheating by personation.

Cheating by personation of by knowingly substituting one person for another, or representing that a personation of the person really is.

trate to the High Court, under s. 432 of the Code of Criminal Procedure, as to whether, on the facts stated, any offence has been committed by an accused person, it lies on the prosecution to make out that an offence has been committed, and under the circumstances the prosecution must begin.—QUEEN-EMPRESS v. HARADHAN alias RAKHAL DAM: GROSH.

I. L. R., 19 Cal. 380. [Norris and Beverley, J]. April 20, 1892.]

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

- (a.) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.
- (b.) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Ruling.

WHERE a person represented a girl to be the daughter of one woman, when she was within his knowledge the daughter of another woman, held that he was guilty of cheating

by personation under s. 416 of the Penal Code, and that it was unnecessary to bring in s 100 relating to abetment.—QUBEN v. DHANPUT OJHAH, 7 W. R. 51. [Glover,]. April 5, 1867.]

417. Whoever cheats shall be punished with imprisonment of either Presy. Mag. description for a term which may extend to one or Mag. of ist or 2nd class. year, or with fine, or with both. Punishment for cheating.

Warrant.

*Charge.—That you, on or about the , at , cheated the complainant Bailable. by falsely pretending that a certain ornament was made of gold, and thereby deceived him. Not comp • CHARGE.—That you, on or about the and dishonestly induced him to deliver to you the sum of Rs. 100 as the price of the said ornament, whereas the said ornament was not made of gold; and that you thereby committed an offence punishable under, &c.

Are indictment for cheating under ss. 415 and 420 of the Penal Code should state that the property obtained was the property of the person defrauded. But an indictment defective in this respect is defective for uncertainty, and must be objected to, if at all, before the jury is sworn,—Reg. v. Willans, 1 Mad. H. C. R. 31; 1 Ind. Jur., O. S., 94. [Scotland, C.J., and Bittleston, J. Oct. 30, 1862.]

A PASSENGER by railway travelling in a carriage of a higher class than that for which he has paid fare is not guilty of cheating under s. 417 of the Penal Code, but is indictable under the Railway Act (XVIII. of 1854).—REG. v. DAYABHAI PARJARAM, I Bom. H. C. R. 140. [Couch and Tucker. JJ. Jan. 15, 1864.]

To induce a son to pay his father's debts, by acting merely on his fear of consequences to his father, is not cheating To describe those consequences to be more serious. than in fact they were likely to be may be to deceive, but is not cheating if done without any fraudulent or dishonest intention.—QUEEN v. RAJ COOMAR BANERJEE, W. R., Sp., 25. [Loch and Steer, J]. April 29, 1864.]

THE prisoner having passed himself off as a police-officer, and cheated several villagers out of money, was held guilty of cheating, and falsely personating a public servant. Queen v. Sadanund Doss alias Sona Biswas, 2 W. R. 29. [Kemp,]. Jan. 30, 1865.]

A CHAURIDAR, who obtains money from another, either by fraudulent inducement or dishonestly, or by putting that person in fear of injury, is punishable under s. 417 of the Penal Code (cheating), or ss. 383, 384 (extortion), but not for criminal misappropriation of public money entrusted to him as a public servant.—QUEEN v. RAMNARAIN CHAUKI-DAR, 3 W. R. 32. [Loch and Seton-Karr, J]. June 21, 1865.]

THE mere issue of a hukumnama (to collect statistical information) by a police-officer is no legal ground for a conviction of abetment of cheating or of extortion.—QUEEN T. MEAJAN, 4 W. R. 5. [Kemp and Seton-Karr, JJ. Sep. 9, 1865.]

In a case of cheating, the prisoner was sentenced to six months' rigorous imprisonment and a fine of Rs. 300, two hundred of which was ordered to be paid to the prosecutor as compensation. The Sessions Judge, on appeal, confirmed the conviction. On receiving a petition from the prisoner, the High Court directed the Sessions Judge to submit the records of the case. Kemp, J., observed: "I find, on reading the evidence, that the petitioner and others held a joint-decree against the prosecutor for Rs. 194-10. cution was sued out; the property of the prosecutor attached; and its sale was imminent, when prosecutor is said to have entered into an amicable arrangement with the petitioner, agreeing to pay Rs. 154, provided a petition was filed in Court, and the sale was stayed. The petitioner did not fulfil this promise. The sale took place, and a portion of the property was purchased by the petitioner's vakel. I hold that this is a simple breach of contract, for which he prosecutor, if so advised, has his civil remedy in a suit for damages. The prosecutor may have been led to expect that the petitioner would take measures to withdraw the execution-process, and to stay the sale; but there is no evidence whatever that, at the time the petitioner agreed to settle matters for Rs. 154, it was then his intention not to do what he led the prosecutor to expect that he would do. The main element which constitutes the offence of cheating, is therefore wanting—namely, there was no intention then present to descive, and thereby to induce the prosecutor to make conditional arrangements for an amicable adjustment of the decree. I would quash the conviction of the prisoners and direct his release."—In the Matter of Sadoo Churn Pal, 4 W. R. 13. [Loch, Kemp, and Seton-Karr, JJ. Sep. 18, 1865.]

(BBC. 417.]

[CHAP. XVII.

The mere taking money one day, and dishonestly running away without paying the next day, is not necessarily cheating. There must be an intention to deceive and defraud at the time of taking the money, and the subsequent conduct of the prisoner would only be evidence to show the previous dishonest intention.—QUEEN THERRAMON HULWAYE, 5 W. R. 5; I Ind. Jur., N. S., 97. [Campbell, J. Jan. 15, 1866]

WHERE the prisoner was convicted of cheating by inducing a man to part with his money, and contract marriage with a girl, under the false impression that she was a Brahmini, the conviction was upheld.—QUEEN v. PUDDOMONIE BRISTOBER, 5 W. R. 93. [Glover, J. May 28, 1866.]

WHERE two girls were bought by the prisoners on speculation, taken to a foreign and distant district, palmed off as women of a much higher caste than they really were, and married to two Rajputs, after receiving the usual bonus, held that the prisoners could not be convicted under s. 373 of the Penal Code, but of cheating and false personation under ss. 415 and 416.—Queen v. Dabee Sing, 7 W. R. 55. Kemp and Seton-Karr, J. April 8, 1867.

ACCUSED was found guilty of having endeavoured to evade payment of a railway-fare, by the production of an old pass, altered as to date and number of personse Held that, although Act XVIII. of 1854 provides for the punishment of any attempt to evade payment of fare, the accused was, in the present instance, rightly convicted, not under that Act, but under the Penal Code, of an attempt to cheat, because there were distinct acts constituting cheating which accompanied such evasion—CROWN v. GUNPUT, Panj. Rec., No. 6 of 1868.

Where the accused secretly entered an exhibition-building without having purchased a ticket, and was there apprehended, it was held that such act did not amount to the offence of cheating under s. 415 of the Penal Code. Such entry, when unaccompanied by any of the intents specified in s. 441 of the Penal Code, does not amount to criminal trespass or any other criminal offence.—Reg v. Mehervanji Bejanji, 6 Rom H. C. R. 6. [Tucker.and Warden, JJ. Feb. 11, 1869.]

THE defendant was convicted of cheating. He applied to the tahsildar for a specified quantity of land on cowle tenure free of tax for five years, and falsely more that the land was waste land. Held, a good conviction.—Pro., Jan. 6, 1871, 6 Mad. H. C. R. 63, Ap. 12.

The prisoners received a Government promissory note, promising to return certain jewels pledged to them, but not intending to do so; and they subsequently claimed to retain the note for another debt alleged to be due to them by the sender. Held that they were guilty of cheating.—Queen v. Sheodurshun Dass, 3 N.-W. P. 17. [Turner and Spankie, JJ. Jan. 13, 1871.]

A person hiring certain property for use at a wedding, paying a portion of the hire, and giving a written promise to pay the balance of the hire, and to restore the property after the wedding, he being well aware that there was to be no wedding, and intending, when he got the property, to apply for its attachment in a civil suit in respect of an alleged claim, is guilty of cheating.—Queen v. Kader Bux, 3 N.-W. P. 16. [Spankie, J. Jan. 13, 1871.]

Where the High Court was of opinion (in a case in which no appeal lay to it) that the facts found by the Court that tried the prisoners, and the Court of appeal from such Court, did not constitute the offence of cheating, of which the prisoners had been convicted, the High Court, in the exercise of its extraordinary jurisdiction, reversed the conviction and sentence. To justify a conviction for the offence of cheating, there must be some evidence of an intention to cheat at the time when the promise (the omission to perform which completes the offence of cheating) is made.—Reg. v. Hargovardas and Harissandas, 9 Bom. H. C. R. 448. [Gibbs and Melvill, J]. Jan. 25, 1872.]

WHERE the accused were convicted of cheating under s. 415, Penal Code—the one of selling watered milk, and the other an inferior sort of sweetmeats—they were acquitted; the former, because the purchaser knew, and was told, the milk was watered, and so there was no deception; and the latter, on the ground that the purchaser might have tasted the sweetmeats before buying, and the sweetmeats were not composed of any material injurious to health.—QUBEN v. KALER MODOCK, 18 W. R. 61. [Glover and Pontifer, J] Nov. 8, 1872.]

A MISREPRESENTATION by false description of one's position in life falls under the heading of cheating, and not under that of forgery. Where, therefore, a document purported to have been signed by "G. L., patwari," and it was said that it was signed by G. L., but at a time when G. L. was not a patwari, it was held that the document was not a forgery within s. 464 of the Penal Code.—Joy Kurn Singh v. Man Patuck, 21 W. R. 41. [Kemp and Ainslie, J]. Feb. 17, 1874.]

A PERSON who purchased rice from a famine-relief officer at a certain rate (16 seers to the rupee), on condition that he should sell it at a seer the rupee less, was convicted of cheating under s. 420, Penal Code, because he did not sell it at the rate agreed on, but at 12 seers to the rupee. Held that as, within the meaning of ss. 23 and 24, Penal Code, there had been no wrongful gain or wrongful loss to any one, no offence had been committed under s. 415, Penal Code.—REG. v. LAL MAHOMED, 22 W. R. 82. [Couch, C]., and Ainslie, J. Sep. 15, 1874.]

ACCORDING to an unreported ruling of the Bombay High Court, it was held that, where the result of cheating is the delivery of property, the offence falls under s. 420, not under s. 417.—Reg. v. BAWAJI KALIDAS, Bom. H. C. Rulings. [Sep. 25, 1875.]

The accused purchased an agreement-stamp from a licensed vendor, representing himself to be one Hema. The vendor entered Hema's name in the register as purchaser. Held that a charge of cheating could not be sustained. Per Plowden, J.—Though the accused, by personating Hema, deceived the stamp-vendor, and induced him to make an incorrect entry in his register, which act was likely to cause damage to the stamp-vendor, it was not shown that the accused had any fraudulent design upon the vendor, and it was not enough if his intention was to use the stamp to the injury of Hema. Per Lindsay, J.,—There was a deception within s. 415, but the act of selling a stamp to one personating another could not possibly cause damage to a bond-fide vendor in any way, and the mere fact of the accused personating Hema did not induce the vendor to sell the stamp.—Girabharee v. Crown, Panj. Rec., No. 16 of 1876.

In a prosecution for an attempt to cheat, under ss. 417-511 of the Penal Code, the accused was charged and convicted of having, at the central octroi-office, made false representations as to the contents of certain kuppas (skin vessels), the object of which was to obtain a certificate, entitling him to obtain a refund of octroi-duty. Prior to granting him the certificate, the octroi-officers examined the contents of the kuppas, and tound that the representations of the accused regarding them were untrue. In consequence of this discovery no certificate was given to him, and he was charged and convicted as above mentioned. The procedure necessary for obtaining a refund of octroi-duty was that the central office, on satisfying itself that the articles produced were of the nature stated, would grant a certificate, which certificate would have to be indorsed by the outpost clerk, when he passed the goods (on which refund was claimed) out of the town, and the owner would have to take back the certificates o indorsed to the central office, and present it to be cashed. Held that, even assuming the accused to have falsely represented the contents of the kuppas as alleged, he had not com pleted an attempt to cheat, but had only made preparation for cheating, and that the conviction must therefore be set aside.—Queen-Empress v. Dhundi, I. L. R., 8 All. 304. [Brodhurst, J. May 8, 1886.]

A PERSON who induced a farmer to ferry him over the river by promise of payment, and then refused to pay the toll, was held to be guilty of cheating under s. 417.—Govt. LUCHMEE NARAIN SINGH, 2 N. A., N.-W. P., Pt. IV., 431.

• WHERE à person is charged with abetting the offence of cheating, it must be proved that the acts of the alleged abettor were intentionally done in concert with, and in further-tance of, the agents in the fraud — GOVT. v. GIRDHAREE, 3 N. A., N.-W. P., Pt. I., 431.

THE offence of cheating must, like that of extortion, be committed by the wrongful bearining of a consent. The difference is, that the extortioner obtains the consent by intimidation, and the cheat by deception.—Indian Law Commissioners' Report, Note N, 112

PRISONER was requested to make an entry in a book of account belonging to the complainant to the effect that he was indebted to the complainant in a certain sum found due on a settlement of accounts; instead of making this entry as requested, prisoner entered in a language not known to complainant that this sum had been paid to complainant he was convicted of forgery under s. 465 of the Penal Code. Held that the offence was not forgery, but an attempt to cheat.—Queen-Empress v. Kunju Nayar, I. L. R., 12-Mad 114. [Muttusami Ayyar and Shephard, J]. Sep. 9, 20, 1888.]

Dife.

A MAN may be guilty of an attempt to cheat, although the person be attempts to cheat is forewarned, and is, therefore, not cheated. R. v. Hensler (11 Cox C. C. 570) referred to. M wrote a letter to the Currency Office at Calcutta, enclosing the halves of two Government currency-notes, stating that the other halves were lost, and inquiring. what steps should be taken for the recovery of the value of the notes. The Currency Office having, upon inquiry, discovered that the amount of the notes had been paid to the holder of the other halves, and that the notes had been withdrawn from circulation and cancelled, sent M the usual form of claim to be filled up and returned to it. It appeared from the evidence that the Currency Office never contemplated paying M in respect of the notes. The form was filled up and signed by M, and returned by him to the Currency Office. Held that, although there was no intention on the part of the Currency Office to pay the amount of the notes, M was guilty of an attempt to cheat.—Govt. of Bengal V. Usesh Chunder Mitter, I. L. R., 16 Cal. 310. [Macpherson and Trevelyan, J]. Nov. 6, 1868.]

THE following important judgment was delivered by the High Court, Calcusta, in a case of cheating, in which a Bench of Honorary Magistrates, Calcutta, convicted the accused:—

"The petitioner has been convicted under s. 420 of the Indian Peral Code, and sentenced to rigorous imprisonment for one month by a Bench of Presidency Magistrates in Calcutta. The charge against him was that he falsely represented to Munraj that he would pay the value of three tins of ghee when they would be taken to his house, and thereby he fraudulently induced the said Munraj to deliver to him the said three tins: that Munraj would not have agreed to part with the said tins had he not been deceived in the way mentioned above.

- 2. The evidence given in this case shows that the petitioner called at the shop of Munraj, and settled the price of three tins of ghee. He then told Munraj to send the three tins of ghee to his house, promising to pay the price thereof to a servant of the shop, if he would accompany him. Munraj agreed to this, and the tins were sent through a copy to the house of the petitioner, and he instructed his brother, an employé in the shop, to go with the petitioner to receive the promised payment. The employé of the shop, to a arriving at the petitioner's house, was told to wait for an hour. After that space of time had elasped, the petitioner told him to come again in the night, when he would be paid. This servant of the shop called again at the petitioner's house in the night, but did not find him at home. The owner and this servant went again to that house in the same night, but did not find the petitioner there. Thereupon a complaint was lodged in the local thana.
- 3. An application was made to this Court by the petitioner for revision of the finding and the sentence substantially on two grounds: First, that the Bench of Magistrates exercised their discretion improperly in refusing to adjourn the case to enable the petitioner to adduce evidence in support of his defence. Secondly, that neither is there a finding in the judgment of the Bench of Magistrates that he deceived Munraj by making any false representation, nor is the evidence sufficient to support such conclusion.
- 4. As regards the first ground, we are of opinion, after perusing the affidavit filed by the petitioner, and the letter (4) of explanation submitted by the Bench of Magistrates, that there was no improper exercise of discretion on their part in refusing the application for adjournment. But, considering the reasous recorded by the Bench of Magistrates in their judgment, which they were bound to record under clause i of s. 370, C. P. Code, we think that they are not sufficient to support a conviction under s. 420. The hardest of a person taking delivery of goods, promising to pay cash, and ultimately failing to keep his promise, would not amount to cheating. It must be shown, in the first place, that the representation that the representer would pay the value of goods sold to him in cash was made falsely, i. e., the representer knew that either he did not mean to have to show that the representation is false. In the next place, it must be established in order to show that the representation is false. In the next place, it must be shown in the evidence that the seller was deceived by the false representation, that is to say, that he would not have delivered the goods if he disbelieved the representation in question.
- 5. These two important facts are not found in the judgment of the Bench of Magistrates; and, as we, upon the evidence adduced in this case, are unable to say that, without any reasonable doubt, these two facts are true, the omission of the Bench of Magistrates referred to above warrants us in setting aside the convictiou. We accordingly set it aside.





As the petitioner was enlarged on bail pending the hearing of this rule, the only further order necessary is that the bail-bond be declared as discharged.—]ATHARAM v. Mungaj (unreported). [Mitter and Trevelyan, JJ. Feb. 26, 1889.]

. ENGLISH CASES ON CHEATING.

WHEREVER a person fraudulently represents as an existing fact that which is not un existing fact, and so gets money, &c., that is an offence within the Act.-R. v. WOOLLEY, 7 Den. 559; 3 C. and K. 98; 19

L. J. (M. C.) 165. .
WHERE a carrier, falsely pretending that he had carried certain goods to A B, demanded, and thereupon obtained from the consignor, sixteen shillings for the carriage of them, it was holden to be within the Statute. -R. v. COLEMAN, 2 East, P. C., 672. See R. v. Airey, 2 East 30.

A FOREMAN represented to his master that a certain sum was due to the workmen under him, and obtained a cheque for the amount stated to be due. The amount of the cheque exceeded by seven shillings the amount really due to the workmen. foreman paid the workmen, but kept the surplus seven shillings to himself. He was held to have been guilty of obtaining the cheque under false pretences.—R. v. Leo-M.Ro., 1 Den. 303; 2 C. and K. 514.

THE essence of the offence of cheating is exeit. Thus, where a workman stated that deceit. he had done more work than he really had, and requested payment for the work he stated he had done, and his master, knowing that it was a false over charge, and wishing to entrap him, paid him the amount demanded, it was held that the workman could not be indicted for obtaining money under false pretences, as it was not the falsehood which induced his master to part with the

E. v. MILLS, Dears, and B. 205; 20 L. J. (M. C.) 79. The detendant, on entering the service of a railway company, signed a book of rules, acopy of which was given to him. One of the rules was: " No servant of the Company shall be entitled to claim payment of any wages due to him on leaving the Company's service until he shall have delivered up his uniform clothing." On leaving the service, the defendant knowingly and fraudulently delivered up to an officer of the Company, as part of his own uniform, a great-coat belonging to a fellow-servant, and so obtained the wages due to him. It was held that he was properly convicted of obtaining by false pretences the money so paid to him as wages.—REG. v. BULL, 13 Cox. 608 (C. C. R.)

WHERE the defendant falsely pretended to J N that he was entrusted by the Duke de Lauzan to take some horses from Ireland

to London for him, and that he had been detained so long by contrary winds that his money was all spent, by means of which representation he induced | N to advance him money, this was holden to be within the Act. -R. v. Villeneuve, 2 East., P. C., 830.

So, where the defendant, who had actually taken premises, and was doing a small business in coal, obtained forty coal-bags on credit from the prosecutor by falsely pretending that he had a lot of trucks of coal at a railway-station on demurrage, and that he required forty coal-bags, this was held to be a false pretence within the Statute.—R. v. WILLOT, 12 Cox. 68 (C. C. R.)

So, where the defendants, falsely pretending that they had made a bet with A B that one of them should run ten miles within an hour, prevailed upon J N to join them in the bet, and obtained from him twenty guineas as his share in it, the Judges held this to be within the Statute, notwithstanding the pretence was probably one against which com-

mon prudence might have guarded.-Young v. R., 3 T. R. 98.

WHERE an attorney, who had appeared for J S, who was fined 21. on a summary conviction, called on the wife of J S, and told her that he had been with J N, who was fined 21. for a like offence, to Mr. B and Mr. L, and that he had prevailed on Mr. B and Mr. L. to take 11. instead of 21., and that, if she would give him 11., he would go and do the same for her; and she thereupon gave him a sovereign, and afterwards paid him for his trouble; and it was proved that the attorney never applied to Mr. B or Mr. L respecting either of the fines, and that both were afterwards paid in full: it was held that the attorney was guilty of obtaining money by false pretences.—R. v. ASTERLEY, 7 C. and P. 191.

Wнви a servant, who had authority to buy goods, and was to be repaid on producing a ticket containing a statement of the purchase, produced such a ticket, and obtained the amount stated therein, no purchase having, in fact, been made, this was held to be not larceny, but obtaining money by false pretences.-R. v. BARNES, 2 Din. 59; 20 L. J. (M. C.) 34. And see R. v. Prince, 38 L.]. (M. C.) 8; L. R, 1 C. C. R. 150.

WHERE the foreman of a manufacturer, who was in the habit of receiving from his master money to pay the workmen, obtained from him, by means of false written accounts of the wages earned by the men,

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[P. C. 55.

more than the men had earned or he had paid them, the Judges held it to be within the Act; they said that all cases where the false pretence creates the credit are within the Statute; and here the defendant would not have obtained the excess above what was really due to the workmen were it not for the false account he had delivered to his master.—R. v. WITCHELL, 2 East, P. C., 830.

IT was the prisoner's duty to ascertain daily the amount of dock-dues payable by his master, and, having ascertained it, to apply to his master's cashier for the amount. and then to pay it in discharge of the dues. On one occasion, by representing falsely to the cashier that the amount was larger than it really was, as he knew, the prisoner obtained from the cashier the sum he stated it to be, and then paid the real amount due, and appropriated the difference to his own use. This was held to be not larceny, but obtaining money by false pretences.-R. v. THOMPSON, L. and C. 233; 32 L. J. (M. C.) 57. It is difficult to distinguish the essential facts of this case from those in R. v. Cooke, L. R., 1 C. C. R. 295; 40 L. J. (M. C.) 68, where the prisoner was held to be guilty of larceny. R. v. Thompson was cited and observed upon in R. v. Cooke, although not overruled, Bovill, C.J., saying that the decision in R. v. Thompson went entirely on the question whether there was a larceny in the obtaining of the money in the first instance, and that the point was not considered whether the subsequent misappropriation was larceny.

So, where the defendant obtained goods by falsely stating that he wanted them for J S, who lived at N, and was a person whom he would trust with 1,000l., and who went out to New Orleans twice a year to take goods to his sons, this was held to be a sufficient false pretence within the Statute.—R. v. ARCHER, Dears. 449.

So, where the false pretence alleged was, that a person who lived in a large house down the street, and had had a daughter married some time back, had been to him (the defendant) about some carpet, and had asked him to procure a piece of carpet, whereby the defendant obtained from the prosecutor twenty yards of carpet: this was held sufficient.—R. v. Burnsides, Bell 282; 30 L. J. (M. C.) 42.

OBTAINING as a loan from the drawer of a bill accepted by the prisoner, and negotiated by the drawer, part of the amount, for the purpose of paying the bill, under the false pretence that the prisoner was prepared with the residue of the amount, was holden to be an offence within the Statute,

the prisoner being shown not to be prepared and not intending so to apply the money.—
R. v. CROSSBY, 2 M. and Rob. 17.

IN like marner, where the defendant obtained goods by a false statement that a bill, drawn on and accepted by himself, and purporting to be payable at the London and Westminster Bank, which hegave the prosecutor for the price of the goods, would be paid at the bank the next day, and that he had made arrangements for it, this was held a false pretence within the Act.—R. « HUGHES, I F. and F. 355.

Where the Secretary of an Odd Fellows Lodge told a member that he owed the Lodge 13s. 6d., and thereby obtained that sum from him fraudulently, whereas the member owed 2s. 2d. only, he was held to be rightly convicted of obtaining money by false pretences.—R. v. Woolley, I Din. 559. 3 C. and K. 98; 19 L. J. (M. C.) 165.

3 C. and K. 98; 19 L.]. (M. C.) 165.
A CREDITOR who wilfully and fraudulently represents to a third person who holds moneys of his debtor that a larger sum is due to him from the debtor than is really the case, and thus obtains from such third person payment of the larger sum, is guilty of a false pretence within the Statute, and that too, although he may have obtained a judgment by default, not set aside, against he debtor for the largement.—R. TAYLOR, 15 COX. 265, 268.

OBTAINING money by means of false statements of the name and circumstances of the defendant or any other person, in a bagging letter, is within the Statute.—R. v. JONES, E. Den. 551; 19 L. J. (M. C.) 162.

WHERE the defendant obtained money from a woman under the threat of an action for breach of promise of marriage, he being in fact, a married man already, an indictment, laying as the false pretents that he was entitled to maintain an action against her for the breach of promise, was held by Maule, J., to be good, for that this was a false pretence within the Statuts.—R. c. COPELAND, C. and Mar. 516.

An indictment charging the prisoner with obtaining money from a wife whose husband had run away, by falsely pretending to her that she, the prisoner, had power to bring him back, is good, and sufficiently states an indictable offence.—R. s. Gerrs, L. and C. 502; 34 L. J. (M. C.) So.

WHERE the defendant pretended that he was carrying on an extensive business as a surveyor and house-agent, and thereby induced the prosecutor to deposit with him 25t. as a security for his (the prosecutor's) fidelity as a clerk, whereas the definition was not carrying on any business as a ser-

veyor or house-agent, this was held to be a laise pretence within the Statute. - R. v. CRABE, 11 Cox. 85 (C. C. R.). But where the defendant pretended (1) that he was doing a good business, and (2) that he had recently sold a good business, and thereby induced the prosecutor to deposit with him 34. a security for the prosecutor's fidelity as an assistant, whereas, in truth, defendant's business was worthless, and the defendant was a bankrupt, it was held that neither of the false pretences alleged came within the Statute. As to the first pretence, it was a mere exaggerated representation of value upon which, though fraudulently, an indictment would not lie; and as to the second, it was too remote. R. v. Williamson, 11 Cox. 328, per Byles, J. It will be noticed that, in the former of these two cases, there was no existing business at all, whereas, in the latter, there appears to have been an existing, although a worthless, business. See also R. v. Watson, Dears, and B. 348; 27 L. J. (M. C.) 18, in which, although it was not necessary to decide the point, Erle, J., said: "I wish not to be supposed to assent to the proposition that an indictment [for lalse pretences] can be sustained by proof of mere exaggeration of the prosperity of a business, where there is an original business. It is difficult to draw a decided line; but I think it has been decided that exaggerated praise does not render a person liable within the Statute." As to the general doctrine that exaggerated praise does not render a prisoner liable within the Statute and the limitation of that doctrine; see R. v. Bryan and other cases, post.

WHERE the prisoner sold to the prosecutor a revisionary interest which he had previously sold to another, and the prosecutor took a regular assignment of it, with the usual covenants for title, Littledale, I., ruled that he could not be convicted for obtaining money by false pretences; for, if this were within the Statute, every breach of warranty or false assertion at the time of a bargain might be treated as such, and the party be transported.—R. v. Codrington, i and P. 661. In R. v. Kenrick, 5 Q. B. 49; Dav, and M. 208, that decision was much questioned; and it was strongly intimated that the execution of a contract between the same parties does not secure from punishment the obtaining of money under false pretences, in conformity with that contract. And in R. v. Abbott, 1 Dec. 173; 2 C. and K. 630, it was decided unanimously by the Judges, upon a case reserved, that the law was so. And see also R. v. Burgon, Dears.

and B. 11; 25 L. J. (M. C.) 105; and R. v. Goss, Bell 208; 29 L. J. (M. C.) 86, in which, upon the authority of R. v. Abbott, the same law was laid down.

In a recent case, R.v. Meakin, 11 Cox. 270 (C. C. R.), where the defendant induced the prosecutor to lend him money on a bill-ofsale of furniture, and the joint and several promissory note of the defendant and another person, by representing that the furniture was unincumbered, whereas the defendant had previously given a bill-of-sale of the same furniture to another person, although not to its full value, this was held to be an indictable false pretence. Where the indictment charged that the defendant, having in his possession a certain weight of twenty-eight pounds, falsely pretended to C that a quantity of coals, which he delivered to C, weighed sixteen hundredweight (meaning 1,792 pounds weight), and were worth 11., and that the weight was fifty-six pounds, by means of which he obtained a sovereign from C with intent to defraud him of part thereof, to wit 10s.; whereas the coals did not weigh 1,792 pounds, and were not worth 11., and whereas the weight was not fifty-six pounds, and whereas the coals were of the weight of 806 pounds only, and were not worth more than 10s., and whereas the weight was twenty-eight pounds only; the Judges (according to the report) held a conviction on the indictment wrong, on the ground that all the pretences, except that relating to the weight, were mere false affirmations, and that, as to the weight, there was no allegation to connect the sale of the coals with the use of the weight.—R. v. REED. 7 C. and P. 848. It was stated by Lord Denman, C.J, in Hamilton v. R., 29 B. 271, that this case of R. v. Reed was misreported, and that no such decision was given; but His Lordship seems to have been mistaken in this; see Dears. and B. 35, note (e). But at all events, the case of R. v. Reed can no longer be considered to be law since the decision in R. v. Shirwood, Dears. and B 251; 26 L. J. (M. C.) 81. There the defendant, having contracted to sell and deliver to the prosecutrix a load of coals at 7d. per cwt., delivered to her a load of coals which he knew weighed only 14 cwt., but which he stated to her contained 18 cwt., and produced a ticket, showing 18 cwt. to be the weight, which he said he had himself made out when the coals were weighed; and she thereupon paid him the price as for 18 cwt., which was 2s. 4d. more than was really due; and it was held that the defendant was indictable for obtaining the 2s. 4d.

by false pretences. This decision was approved and followed in R. v. Lee, L. and C. 418; 33 L. J. (M.C.) 129.

So, where the prosecutor bought of the defendant and paid him for a quantity of coal on a false representation by him that there were 15 cwt., whereas, in fact, there were only 8 cwt., but so packed in the cart as to have the appearance of a larger quantity, this was held to be an indictable false pretence.—R. v. RAGG, Bale 214; 29 L. J. (M. C.) 86. See also R. v. Eagleton, Dears.

515; 24 L. J. (M. C.) 158.

A PERSON who obtains from a pawnbroker upon an article which he falsely represents to be silver, a greater advance than would otherwise have been made, is guilty of a false pretence within the Statute; although the pawnbroker has the opportunity of testing the article at the time. - R. v. BALL, C. and Mar. 249; see R. v. ROBBUCK, Dears. and B. 24; 25 L. J. (M. C.) 101; R. v. Goss, Bell 208; 29 L. J. (M. C.) 86.

AND a false representation that a stamp on a watch is the hall-mark of the Goldsmith's Company, and that the number 18 put thereon indicates that it is made of eighteen-carat gold, is a false pretence, and is not the less so because accompanied by the representation that the watch is a gold one, and some gold is proved to have been contained in its composition.—R. v. SUTER,

10 Cox. 577.

But a false representation of what is mere matter of opinion, falling within the category of untrue praise in the course of a contract for sale, is not indictable. The defendant was convicted on an indictment for obtaining money by false pretences, the pretences charged being that certain spoons were of the best quality; that they were equal to Elkington's A (meaning spoons made by Messrs. Elkington, and stamped by them with the letter A); that the foundations were of the best material; and that they had as much silver on them as Elkington's The representations were made to a pawnbroker for the purpose of obtaining, and the defendant did thereby obtain, advances of money on the spoons, which were, in fact, of inferior quality, and were of less, held to be indictable for the false pretence value than the money advanced on them, and the pawnbroker stated that he was induced by the defendant's misrepresentations alone to advance the money; and that, if he had known the real quality of the spoons, he would have advanced no money on them. The jury found the defendant guilty of fraudulently and falsely representing that the spoons had as much silver on them as Elkington's A, and that the foundations

were of the best material, &c., and that he It was neverthereby obtained the money. theless held by a large majority of the Judges, that the conviction could not be sustained.—R. v. BRYAN, Dears. and B. 265; 26 L. J. (M. C.) 84. See also R. v. Levise, Cox. 374. The decision in R. v. Bryez is said by Erle, C.J., to have been given "upon the sound principle, that indefinite praise upon a matter of indefinite opinion cannot be made the ground of an indictment for false pretences." R. v. Goss, 29 L. J. (M.C.) 90; and by Byles, J., to have been governed by the maxim, Simplex commendatio don obligat.-R. v. ARDLEY, L. R., I C. C. R. 306; 40 L. J. (M.C.) 88.

But a false representation respecting an alleged matter of definite fact knowingly made is a false pretence within the Statute, and that, too, although the representation is merely as to the quality of goods sold or pledged. Therefore, where the defendant induced the prosecutor to purchase a chain from him by fraudulently representing that it was fifteen-carat gold, when, in fact, it was only of a quality a trifle better than six carats, knowing at the time that he was falsely representing the quality of the chain as fifteen-carat gold, it was held that the statement, that the chain was fifteen-carat gold, not being mere exaggerated praise, nor relating to a mere matter of opinion, but a statement as to a specific fact within the defendant's knowledge, was a sufficient false pretence to sustain an indictment for obtaining money by false pretences.—R. v. Ardley, L. R., 1 C. C. R. 301; 40 L. J. (M. C.) 85.

AND where the defendants induced a purchaser to buy and pay for a cheese of a very inferior description by the wilfully false statement that a taster of a different and superior cheese produced as a sample had formed part of and been taken out of the cheese sold, it was held that he might be convicted of obtaining money by false pretences.—R. v. Goss, Bell. 208; 28 L. J. (M.

So, where the defendant sold spurious blacking as "Everett's Blacking," he was

-R. v. Dundas, 6 Cox. 380.

WHERE the defendant falsely represented to the prosecutrix that certain packages which he sold to her contained good tea, whereas, in fact, each package contained a mixture of which only one-fourth part was tea, the remaining three-fourths consisting of sand and other articles unfit for food or drink, and the jury found that the decendant knew the real nature of the contents of the

packages, that it was not tea, but a mixture of articles unfit for drink, and that he designedly falsely pretended that it was good tea with intent to defraud, and the defendant was convicted, it was held that the conviction was right.—R. v. FOSTER, L. R., 2 Q. B. D. 301; 40 L. J. (M. C.) 128.

The Assistant Judge of the Middlesex Sessions having directed a jury that the decisions of the Judges were to the effect that a mere representation of an article as gold, however small the portion of gold it contained, amounted only to an exaggeration of its quality, and would not support a criminal charge, Willes, J., said that he must except to this direction.—R. v. Suter, 10 Cox. 577, 578.

THE defendant and two other persons entered into articles of partnership, by the terms of which the profits were to be divided equally among them. By a subsequent verbal arrangement the defendant was to act as agent for the sale of the partnership-goods, and was to receive a commission on all orders obtained by him, which commission was to be paid out of the partnership-funds before any division of profits was made. The defendant, by falsely pretending that he had obtained some orders, got his partners to pay him a sum for commission. was held that he was not indictable for false pretences, his charges were payable out of the partnership-funds, and his false statement was a misrepresentation concerning a partnership matter, and would have to be investigated, and the sum paid duly considered, in taking the partnership-accounts, in order to ascertain the profits.-R. v. Evans, L. and C. 259; 32 L. J. (M. C.) 38.

It is not necessary that the pretence should be in word; the conduct and acts of the party will be sufficient, without any verbal representation—R. v. HUNTER; R. v. CARTER, 10 Cox. 642, 648.

Thus, if a person obtain goods from another upon-giving him in payment his cheque upon a banker, with whom, in fact, he has no account, this (although not indictable as a fraud at common law, R. v. Lara, 6 T. R. 565; see R. v. Flint, R. and R. 460) is a false pretence within the meaning of the Acc.—R. v. JACKSON, 3 Camp. 370.

But, if the defendant, at the time he gives the cheque, believes, although he has no account at the bankers, that the cheque will be paid on presentation, he cannot be convicted of a false pretence.—R. v. WALNE, 11 Cox. 647 (C. C. R.).

THUS, where the defendant bought a mare, and paid for her on Thursday by a cheque drawn on a banker with whom he had no account, but told the prosecutor not to present the cheque until Saturday, to which the prosecutor assented, but nevertheless did-present it on Thursday, when it was dishonoured, and it appeared from the evidence that the defendant was on Thursday in daily expectation of having money paid to him which would have enabled him to place the banker in funds to meet the cheque on Saturday, this was held to be no false pretence. Id. But a man who makes and gives a cheque for the amount of goods purchased in a readymoney transaction makes a representation that the cheque is a good and valid order for the amount inserted in it; and if such person has only a colourable account at the bank on which the cheque is drawn without available assets to meet it, and has no authority to overdraw, and knows that the cheque will be dishonoured on presentation, and intends to defraud, he may be convicted of obtaining such goods by such false pre-tence.—R. v. HAZBLTON, L. R., 2 C. C. R.• 134; 44 L. J. (M. C) 11.

WHERE the prisoner was charged with falsely pretending that a post-dated cheque, drawn by himself, was a good and genuine order for 251., and of the value of 251., whereby he obtained a watch and chain; and the jury found that, before the completion of the sale and delivery of the watch by the prosecutor to the prisoner, he represented to the prosecutor that he had an account with the bankers on whom the cheque was drawn, and that he had a right to draw the cheque though he postponed the date for his own convenience, all which was false; and that he represented that the cheque would be paid on or after the day of the date, but that he had no reasonable ground to believe that it would be paid, and that he had no funds to pay it; he was held to be properly convicted. R. v. PARKER, 2 Mood. C. C. 1; 7 C. and P. 825.

But when the indictment stated that the defendant salsely pretended to A B that he was a captain in the East India Company's service, and that a certain promissory note, which he then delivered to A B, was a valuable security for 211., by means of which salse pretences, he fraudulently obtained from A B 81. 152; whereas the desendant was not a captain, &c., and the note was not a valuable security, &c.; it was holden, on error, that, as it did not appear bue that the note was the desendant's own promissory note, or that he knew it to be worthless, there was no sufficient salse pretence

in that respect; and as the two pretences were to be taken together, that the indictment was bad.—R. v. WICKHAM, 10 A. and E. 34; 2 Per. and D. 333; 8 L. J. (M. C.) 87. See also R. v. Philpotts, I C. and K. 112.

and P. 420.

It would seem, however, that an indictment which charged that the defendant obtained money by falsely pretending that a certain piece of paper was a bank-note then current, and of the value for which it purported to be made, would be supported by evidence that it was the note of a bank which had stopped payment, and was no longer in existence, and that it had paid only a small dividend, and that these facts were known to the defendant.—R. v. EVANS, Bell 187; 20 L. J. (M. C.) 20. But, in that case, an allegation that the note was of no value whatever was held not to be supported by the above evidence.

WHERE an indictment charged the defendant with obtaining money, by falsely pretending that a piece of paper was a banknote then current, and of the full value of 51., and the evidence was that the piece of paper was the note of a bank which had stopped payment forty years before, and had not re-opened, and that the defendant knew it, this evidence was held sufficient to justify a conviction, although it appeared from the cross-examination of a witness for the prosecution that the bank-note had been made bankrupt, and the bankruptcy proceedings were not produced, and there was no evidence as to what dividend, if any, had been paid.—R. v. Dowey, 37 L. J. (M. C.) 52.

WHERE a man obtained goods and money for a forged note of hand for ten shillings and six pence, the Judges held it to be a false pretence within the Act.—R. v. FREETH,

R. and R. 127.

In another case, however, where the prisoner obtained goods by means of a forged order, Taunton, J., held that he could not be indicted for obtaining them by false pretences, but should have been indicted for forgery, R. v. Evans, 5 C. and P. 553; and the same was afterwards held by Parke, B, and Coltman, J., in R. v. Anderson, 2 M. and Rob. 471. But see now 14 and 15 Vic., c. 160. 5, 12.

AND when the cashier of a bank, who had a general authority to conduct the business of the bank, and to part with its property on the presentation of a genuine order from a customer, was deceived by a forged order, and parted with the property of the bank to the person who presented the order, and who knew the order to be forged, it was held that the latter was guilty of obtaining by false pretences the money so paid on the order.—R. v. PRINCE, 38 L. J. (M. C.) 8 p.L. R., I C. C. R. 150.

FRAUDULENTLY offering a "flash-note" in payment, under the pretence that it is a bank-note, is a false pretence within the Statute.—R. v. Coulson, 1 Den. 592; 19 L.

J. (M. C.) 182.

A PERSON who fraudulently obtains goods by forwarding to the vendor the half of a bank-note, having previously parted with the corresponding half to a third person, is guilty of obtaining goods by false pretences as by forwarding the half-note he represents that he has the corresponding half ready for the vendor's satisfaction.—R. v. MURPHY, 13 Cox. 298 (Irish C. C. R.).

WHERE a man assumed the name of another to whom money was required to be paid by a genuine instrument, this was holden to be a pretence within the meaning of the Act.—R. v. Story, R. and R. 81.

So, where a person at Oxford, sho was not a member of the University, went, for the purpose of fraud, wearing a commoner's gown and cap, and obtained goods, this was held a sufficient false pretence to satisfy the Statute, though nothing passed in words.—R. v. BARNARD, 7 C. and P. 784.

THE pretence (as may be collected from the authorities above quoted) must be of some existing fact, made for the purpose of inducing the prosecutor to part with his property. Therefore, a pretence that the party would do an act he did not mean to do, as a pretence to pay for goods one defivery, is not a false pretence within the Act, but merely a promise for future conduct.—

R. v. GOODHALL, R. and R. 461.
So, where the defendant obtained money from the prosecutor by the false pretence that he was going to pay his rent, whereas he had no intention of paying his rent, this was held to be no false pretence within the Statute.—R. v. Lee, L. and C. 369; 9 Cox.

So, also, a false pretence that the defendant wanted the loan of 301. to enable him to take a public house is not within the Statute.

–R. v. Woodman, 14 Cox. 179.

AND a pretence to a parish-officer, as an excuse for not working, that the party had not clothes, when ne really has, though it induced the officer to give him clothes, is not a pretence within the Statute, the state-

ment being rather a false excuse for not working than a false pretence to obtain goods.—R. v. WAKELING, R. and R. 504.

An indictment for obtaining money from

An indictment for obtaining money from A under the false pretence that the defendant intended to marry A, and wanted the money to pay for a wedding suit he had bought, was held not sufficient to sustain a conviction.—Pa. v. Johnson, 2 Mood. C. C. 254.

AND when the false pretence averred in the indictment was, that the defendant having executed certain work, there was a certain sum due and owing to him on account of it, whereas only a smaller sum was due to him, this was held-bad as not sufficiently averring a false pretence of an existing fact, and being proveable by evidence of a mere wrongful overcharge.—R. v. OATES, Dears. 459; 24 L. J. (M. C.) 123.

WHERE an indictment alleged that the defendant falsely pretended to P, who lived at one T's, that the said P was to give the defendant 10s., and that T was going to allow him 10s. a week, it was held (Blackburn, J, and Pigott, B., dub.) that the indictment did not allege with sufficient certainty any false pretence respecting any existing fact.—R.v.
-HENDHAWPL. and C. 444; 33 L. J. (M. C.)

But where the statement consists partly of a fraudulent misrepresentation of an existing fact, and partly of an executory promise to do something in futuro—as, that the defendant kept a shop, and that the prosecutrix might go and live with her at the said shop until she obtained a situation; whereas the defendant kept no shop; and the jury find that the prosecutrix parts with her money or goods, relying wholly or in part upon the misrepresentation of fact; this is a sufficient false pretence within the Act.—R. v. FRy, Pears. and B. 449; 27 L. J. (M. C.) 68.

So, where the false representation was that the defendant had brought certain skins, and would sell them to the prosecutor.—R. v. WEST, Dears. and B. 575; 27 L. J. (M. C.)

AND when a married man induced a woman to give him money by representing himself to be unmarried, and by promising that with the money he would furnish a house and return and marry her, he was held indictable for obtaining money by false pretences.—R. v. JERNISON, L. and C. 157; 31 L. j. (M. C.) 146.

IT is also to be observed that a promise to do a thing in futuro may involve a false pretence that the promisor has the power to do that thing, for which false pretence, the promisor may be indictable.—R. v. Giles, L. and C. 502; 34 L. J. (M. C.) 50.

AND where the false pretence charged was that the defendant said he had got a carriage and pair, and expected it down, either that day or the next, this was held to be proved by evidence of his having said that he expected his carriage and pair down.—R. v. HOWARTH, 11 COX. 588 (C. C. R.).

Where money was obtained by the defendant by the false representation that W was about to publish a new directory, and that the defendant was collecting information for it, this was held to be a false pre-tence of an existing fact —R. v. SPEED, 15 Cox. 24 (C. C. R.) Indeed, it may be laid down generally that, as it is not necessary that the statement of the existing facts should be in words, but may be conveyed by the conduct and acts of the party, so also, if made by words or writing, it is not necessary that such statement should be made expressly, if the statement may be naturally and reasonably, although not necessarily, inferred from such words or writing .- R. v. Cooper, L. R., 2 Q. B. D. 510; 46 L. J. (M. C.) 219. Thus, where C was convicted of obtaining potatoes from the prosecutor by. falsely pretending that he was then in a large way of business, that he was in a position to do a good trade in potatoes, and that he was able to pay for large quantities of potatoes as and when the same might be delivered to him, and the evidence that C had so pretended was the following letter written by him to the prosecutor: "Send me one truck of regents and one truck of rocks, as samples, at your prices named in your letter; let them be good quality, then I am sure a good trade will be done for both of us. I will remit you cash on arrival of goods and invoice. I may say, if you use me well, I shall be a good customer." It was held, affirming the conviction, that the words of the letter were fairly and reasonably capable of a construction supporting the pretences charged, and that it was a question for the jury whether the writer intended the prosecutor to put that construction upon them.—Id.

A FALSE pretence actually made to A in B's hearing, whereby money is obtained from B, may be laid as made to B.—R. v. DENT, I C. and K. 240.

AND where the indictment alleged the false pretence to have been made to B and others, and it was proved that B was one of a firm, and that the false pretence was made to him alone, but with intent to defraud the firm, it was held sufficient, the words "and others" being rejected as surplusage.—R. T. KRALEY, 2 Den. 68; 20 L. J. (M. C.) 57.

The jury may connect together representations made in several distinct conversation

(supposing them to be in their nature connectible), and convict the defendant for obtaining money, &c., by means of false pretences made in those several conversations.

—R. v. Wellman, Dears. 188; 22 L. J. (M. C.) 118.

A FALSE pretence made through an innocent agent is the same as if made by the defendant himself, and may be so charged.—R. v. BUTCHER, Bell 6; 28 L. J. (M. C.) 14.

K REPRESENTED to B that hehad a quantity of good tobacco, and induced B to agree to buy some. P was with K at the time, and it was arranged that P was to deliver the tobacco to B, and that B was to pay P for K. P afterwards delivered to B two bales purporting to be tobacco as in pursuance of the contract, and received payment from B. The bales contained little else but rubbish; K and P were parties to the Iraud. It was held on these facts that K was liable to be convicted on an indictment charging him with obtaining money from B by falsely pretending that he was possessed of a quantity of good tobacco.—R. v. KERRIGAN, L and C. 383; 33 L. J. (M. C) 71.

WHERE the indictment charged the defendant with falsely pretending to the prosecutor, whose mare and gelding had strayed, that he would tell him where they were, if he would give him a sovereign down; and the prosecutor gave the sovereign, but the defendant refused to tell, the conviction was held bad; the indictment should have stated that he pretended he knew where they were—R. v. Douglas, I Mood. C. C. 462.

An indictment against A and B charged that C was possessed of a mare and A of a horse, and that A and B falsely pretended to C that B was then and there possessed of a certain sum of money, to wit, 121., and that, if C would exchange his mare for A's horse, B was willing and ready to purchase the horse of C, and give him 121. for it; whereas, in truth and in fact, B was not then and there possessed of the said sum of 121., and was not then and there ready and willing to purchase the said horse of C, and to pay him the 121., and it was held bad on demurrer, for not averring that the defendant knew that B was not possessed of the 121.—R. v. HENDERSON, 2 Mood. C. C. 192; C. and Mar. 328. But as the word "knowingly" is not in the Statute, an indictment which does not contain that word, but follows the words of the Statute, is sufficient after verdict.-R. v. Bowen, 13 Q. B. 790; - 19 L. J. (M. C.) 65. See Hamilton v. R., 9 Q. B. 271; 16 L. J. (M. C.) 9.

THE indictment also must negative the pretences by special averment as in the above precedent; and where such an averment was omitted, it was holden to be an error, and the judgment was reversed.—R. *. Perrort, 2 M. and Sels 379, 386.

WHERE the false paretence alleged was, that the defendant "then was a captains in Her Majesty's 5th Regiment," &c. s the pretence was held to be well gegatived by an averment that the defendant was not, "at the time of making such pretence," a captain, &c.—HAMILTON v. R., 9 Q. B. 271.

IT was also holden, in cases decided on former Statutes, that the indictment should state that the money, &c., obtained was the property of the person whom it was intended to defraud, since, otherwise, a conviction or acquittal on this indictment could not be pleaded in bar to a subsequent indictment for larceny in respect of the same transaction,-SILE v. R., Dears. 132; I E. and B. 533; 22 L. J. (M. C.) 41. But this allegation is expressly declared to be unnecessary by the present Statute, 24 and 25 Vic, c. 96, s. 88. It is not necessary to allege that the pretence was made with the intent of obtaining the money, &c.; it is sufficient toshow that the pretence was made, that the money, &c., was obtained thereby with intent to defraud, and that the pretence was false to the knowledge of the defendant. HAMILTON v. R., 9 Q. B. 271. It is still, however, necessary to allege in the indictment that the defendant obtained the money, &c., " with intent to defraud," and if those words be omitted, the indictment is bad, and cannot be amended under 14 and 15 Vic., c. 100, s. 1, by inserting them.—R. v. James 12 Cox. 127, per Lush, J. If it be a valuable security that was obtained, the indictment need not, it seems, show it to 🗮 will unsatisfied; at all events, it is good after verdict without such averment.—Id. The offence is completed by the obtaining of the money, &c.; and it is no defence where the indictment charges the obtaining of money, that the money has been obtained only by. way of a loan, and that the defendant intends to repay it; R. v. Crossley, 2 M. and Rob. 17; because the property in money that is lent passes as much in a case of loan as on a sale, there being no expectation that the same money which is lent will be returned. See the judgment of Crompton, J., in R. v. Burgon, Dears and B. 11

WHERE, however, a chattel is obtained by way of loan, the property in the chattel does not pass (see the judgment of Crompton, J., supra), and since to constitute an obtaining by false pretence it is equally es-

sential, as in larceny, that there shall be an intention to deprive the owner wholly of his property, if it appears that the defendant has no such intention, but merely intended to obtain the use of the chattel for a limited time, he cannot be convicted of obtaining the chattel by false pretences.—R. v. Kilham, L. R., i CaC, R. 261; 39 L. J. (M.C.) 109.

And, therefore, where the defendant, by false pretences, obtained from a livery-stable keeper a horse on hire, rode it himself during the time of hiring, and afterwards returned it to the stables, it was held that he could not be convicted of obtaining

the horse by false pretence.-Id. See R. v. Boulton, 1 Den. 508; 2 C. and K. 917, 919; L. J. (M.C.) 67.

WE have seen that the offence is completed by the obtaining of the money; and, therefore, where it was transmitted in a letter, posted by the defendant's request in county A, but which reached him in county, B, it was held that this was an obtaining of the money in county A, and that the venue was rightly laid there.-R. v. Jones, 1 Den. 551; 19 L. J. (M.C.) 162. See K. v. Buttery. cit., 4 B. and Ald. 179.

418. Whoever cheats with the knowledge that he is likely thereby to Ct. of Ses.,

Cheating with knowledge that wrongful loss may ensue to person whose interest of-feader is bound to protect.

both.

cause wrongful loss to a person whose interest in Presy. Mag., the transaction to which the cheating relates he was or 2nd class. bound, either by law or by a legal contract, to pro- Uncog. tect, shall be punished with imprisonment of either Warrant. ch may extend to three years, or with fine or with Bailable. description for a term which may extend to three years, or with fine, or with Not comp.

419. Whoever cheats by personation shall be punished with imprison-Ditto. ment of either description for a term which may * Punishment for cheating by personation. extend to three years, or with fine, or with both.

A WITNESS falsely deposing in another's name should be charged with giving false evidence under s. 193, and not with cheating by personation under ss. 415 and 419 of the Penal Code.—REG. v. PREMA BHIKA, I Bom. H. C. R. 89. [Forbes, Westropp, and Tucker,]}. Nov. 5, 1863.]

A MAN, named Yesu, gave the accused four annas with which to purchase for him (Yesu) a stamp. When the stamp-collector asked the accused for his name, he said "Yesu," instead of giving his own name. It was held that this was furnishing false information under s. 177, not cheating by personation under s. 419.—Reg. v. RAGHOJI BIN KANOJI, 3 Bom. H. C. R. 42. [Couch, C.J., and Newton, J. Mar. 6, 1867.]

WHERE a person represented a girl to be the daughter of one woman when she was within his knowledge the daughter of another woman, held that he was guilty of cheating by personation under s. 416 of the Penal, and that it was unnecessary to bring in s. 109 relating to abetment.—QUEEN v. DHANPUT OJHAH, 7 W. R. 51. [Glover, J. April 5,

WHERE two girls were brought by the prisoners on speculation, taken to a foreign and distant district, palmed off as women of much higher caste than they really were, and narried to two Rajputs after receiving the usual bonus, held that the prisoners could not be convicted under s. 373 of the Penal Code, but of cheating and false personation under ss. 415 and 416.—QUEEN v. DABER SINGH, 7 W. R. 55; 3 Wyman's Rev., Civ., and Crim. Rep. 32. [Kemp and Seton-Karr, J.]. April 8, 1867.]

WHERE A Intended to register a deed, but was too ill to do so, and B, who was known to A, personated A, and had the deed registered in her name, it was held that, in the Vabsence of anything to prove that it was intended to defraud any body, A was not guilty of cheating by personation under s. 419 of the Penal Code, but an offence under s. 93 of the Registration Act (XXr of 1866). C and D, who abetted A, were convicted of an of sence under s. Tof the said Act.—In re LOOTHY BEWA, 11 W. R. 24; 2 B. L. R., A. Gr. 25. [Norman and Jackson, J]. Mar. 31, 1861.]

WHERE the accused represented to the prosecutor that a girl was a Brahmin, and . thereby induced him to part with his money in consideration of the marriage of the girl

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to his brother, when the girl was really of the Sudra caste, it was held that he was guilty of cheating by false personation under s. 416.—Queen v. Монім Снимев Sil, 16 W. R. 42. [Ainslie, J. Sep. 2, 1871.]

Where the accused enlisted in the police, calling himself a Jat, got an appointment, and drew pay as a Government servant, whereas he was in reality an Ahir, a caste whose enlistment was prohibited, which fact was well known to the accused, held that the Magistrate rightly held that the offence of cheating by personation had not been committed. Semble, that the accused might have been convicted under s. 162. EMPRESS B. BUDDHU, Panj. Rec., No. 24 of 1880.

The prisoner, having passed the second of as a police-officer, and cheated several villagers out of money was held guilty of cheating and falsely personating as while servant.

THE prisoner, having passed himself off as a police-officer, and cheated several vi lagers out of money, was held guilty of cheating and falsely personating a public servant-QUEEN v. SADANUND Doss alias SONA BISWAS, 2 W. R. 29. [Kemp,]. Jan. 50, 1885.]

A FALSBLY represented himself to be B at a university examination, got a had-ticket under B's name, and headed and signed answer-papers to questions with B's name. Held that A committed the offences of forgery and cheating by personation.—QUBEN-EMPRESS v. APPASAMI, I. L. R., 12 Mad. 151. [Collins, C.]., and Parker, J. Jan 18, 1889.]

To constitute the offence of cheating under s. 415 of the Indian Penal Code, the damage or harm caused or likely to be caused to the person deceived in mind, body, reputation, or property must be the necessary consequence of the act done by reason of the deceit practised, or must be necessarily likely to follow therefrom. Where, therefore, certain persons were charged under s. 419 of the Indian Penal Code, one with personating another person before a Registrar, and the others with abetting such personation, and causing the Registrar to register a divorce, under the provisions of Bengal Act I. of 1876, with the wife of the personated person, and where the lower Courts convicted the accused under that section, holding that, as such registrations were voluntary and a source of gain to the Registrar, harm was caused to the Registrar in mind and reputation by agisteing false divorces, as well as by losing his fees in the future through persons being less likely to avail themselves of his services, and that therefore an offence under the section had been committed. Held that the possibilities contemplated by the lower Courts were too remote; that the facts did not constitute an offence under the section; and that the conviction must therefore be set aside.—Mojev v. Queen-Empress, I. L. R., 17 Cal. 606. [Norris and Macpherson, J]. Mar. 18, 1890.]

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp. 420. Whoever cheats and thereby dishonestly induces the person decheating and dishonestly ceived to deliver any property to any person, or to make, alter, or destroy the whole or any person to make, alter, or destroy the whole or any person at a valuable security, or any thing which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A CONTRACTOR in the Public Works Department, who was charged with cheating in respect of a sum of money which he received on account for work which it was alleged he had not then finished, was acquitted on the evidence, because it was not proved (1) that there was a false pretence made use of by accused; (2) that he knew he was making use of a false pretence, or that he intended to defraud; (3) that the Public Works Department were deceived by the pretence on account of their belief in its truth; and (4) that the accused received the money with the intention of causing wrongful loss to the Government.—Queen v. Kalipuddo Poramanick, 23 W. R. 43. [Kemp and Birch, J]. Mar. 2, 1865.]

A PERSON who purchased rice from a famine-relief officer at a certain rate (16 seers to the rupee), on condition that he should sell it at a seer the rupee less, was convicted of cheating under s. 420 of the Penal Code, because he did not sell it at the rate agreed on, but at 12 seers to the rupee. Held that, as within the meaning of ss. 23 and 24 of the Penal Code there had been no wrongful gain or wrongful loss to any one, no offence had been committed under s. 415 of the Penal Code.—QUEEN v. LAL MAHOMED, 22 W. R. 82. [Couch, C.J., and Ainslie, J. Sep. 15, 1874.]

OF FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY.

421. Whoever dishonestly or fraudulently removes, conceals, or delivers Presy. to any person, or transfers or causes to be trans- or Mag. of 1st Dishonest or fraudulent reierred, to any person, without adequate considera- Uncog. moval or concealment of protion, any property, intending thereby to prevent, or Warrant. perty to prevent distribution among creditors. knowing it to be likely that he will thereby prevent, Bailable. the distribution of that property according to law among his creditors or the Not comp. creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishchestly or fraudulently preventing debt being awailable for creditors

422. Whoever dishonestly or fraudulently prevents any debt or demand. due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person shall be punished wish imprisonment of either description for a term which may extend

Ditto.

to two years, or with fine, or with both.

WHERE A entered into an agreement with B not to compromise a case with C, because he had assigned the benefit of the suit to B as a security for the due payment of some monthly instalments of money, and A, notwithstanding, did afterwards compromise the suit with C, it was held that A could not be convicted under s. 422 of the Penal Code, unless the compromise with C was made dishonestly or fraudulenty towards B.—IN THE MATTER OF NOBIN CHUNDER MUDDUCK, 22 W. R. 46. [Phear and Morris,]]. July 29, 1874.]

428. Whoever dishonestly or fraudulently signs, executes, or becomes a

Ditto.

or fraudulent execution of deed of transfer containing a false seatement of consideration.

party to any deed or instrument which purports to transfer or subject to any charge, any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer

or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ditto.

424. Whoever dishonestly or fraudulently conceals or removes any pro-Dishonest or fraudulent removal or concealment of pro-

perty of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

WHERE a Deputy Magistrate, considering that the attachment of a carriage in execution of a decree of a Civil Court was illegal, because it was placed in the custody of the judgment-debtor's husband, and that the husband had acted fraudulently in recovering and concealing the wheels and axles of the carriage on its subsequent distraint for arrears of municipal tax, convicted him of an offence under s. 424 of the Penal Code, the conviction was set aside. A Deputy Magistrate has 90 authority to order arrears of municipal tax due by a person to be paid out of a fine levied on him.—QUEEN v. BROJA KISORE DUTT, 8 W. R. 17. [Jackson and Hobhouse,]]. June 17, 1867.]

To, sustain a charge of concealment of property under s. 424, there must be evidence of the persons intended to be defrauded by such concealment.—QUEEN T RAM DWAYA, Panj. Rec., No. 16 of 1868.

THE offence which s. 424 of the Penal Code contemplates is such a concealment or removal of property from the place where the property is deposited as can be considered fraudulent, whether the fraud is intended to be practised on creditors or partners. Case. of Kiamuddin v. Allah Buksh (15 W. R. 51) distinguished.—In the Matter of Gour BENODE DUIT, 21 W. R. 10; 13 B. L. R. 308n. [Markby and Birch, J]. Dec. 4, 1873.]

In matters relating to the grant of sanction to prosecute under s. 205 of the Crimial Procedure Code (Act X. of 1882), a Court is regarded as "subordinate" to another Court where the latter is the Court to which an appeal from the former ordinarily lies, and an application for such sanction must be made to such superior Court, even in those particular cases in which an appeal lies to some other Court, e.g., to fine High Court. A decree-holder applied to the First-class Subordinate Judge for sanction to prosecute his indement-debtor, under ss. 206 and 424 of the Penal Code, for fraudulent concealment of certain moveable property, worth about Rs. 10,000 awarded by the decree. This application was rejected by the Subordinate Judge. The District Judge declined to interfere, on the ground that, the decree being appealable to the High Court, the High Court alone could deal with the application under s. 195 of the Criminal Procedure Code. Held that, though the decree in the present instance was appealable to the High Court, still, as appeals from the Court of the First-class Subordinate Judge ordinarily lay to the District Court, the former was subordinate to the latter Court within the meaning of s. 195 of the Criminal Procedure Code.—In re Anant Ramchandra Lotlikar, I. L. R., 11 Bom. 438. West and Birdwood, JJ. Nov. 16, 1886]

OF MISCHIEF.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any persuach change in any property, or in the situation thereof, as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

Explanation r.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

- (a.) A volun tarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.
- (b.) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.
- (c.) A voluntarily throws into a river a ring belonging to Z, with the intermed of thereby causing wrongful loss to Z. A has committed mischief.
- (d.) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.
- (e.) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.
- (f.) A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.
- (g.) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.
- (h.) A causes cattle to enter upon a field belonging to Z, intending to cause, and knowing that he is likely to cause, damage to Z's crop. A has committed mischief.

Rulings.

[436 .]

THE word "object" in s. 295 of the Penal Code does not include animate objects. A bull dedicated and set at large at the sradha of a Hindu in accordance with religious

tention.

usage is not an "object" within the meaning of that section. Where such an animal was killed by certain Mahomedans secretly and at night in the presence of none but Mahomedans for the sake of the meat and value of the skin, held that no offence had been committed under s. 205. Queen-Empress v. Imam Ali (I. L. R., 10 All. 150) followed. Held, further, that such a bull is not "moveable property" within the meaning of ss. 378 and 403, or "property" within the meaning of s. 425 of the Penal Code, and could not therefore be the subject of theft, criminal misappropriation, or mischief. The fact that such a bull receives some attention from the cowherd of the persons who set it at liberty, and s daily fed by him by direction of his employers, and is not used for breeding purposes without their permission being asked, is not inconsistent with a total surrender by those who set it at liberty of all their rights as proprietors. Queen-Empress v. Bandhu (I. L. R., 8 All: 51) followed. Queen-Empress v. Nalla (I. L. R., 11 Mad. 145) referred to and commented on. For the purpose of construing a section of an Act and ascertaining. the intention of the Legislature, the Report of the Indian Law Commissioners or a Select Committee appointed to consider a Bill may be referred to. Queen-Empress v. Kartick Chunder Das (I. L. R. 9 14 Cal. 721) followed.—Romesh Chunder Sannyal v. Hiru Mondal, I. L. R., 17 Cal. 852. [Norris and Macpherson, JJ. Mar. 27 & April 15, 1890]

426. Whoever commits mischief shall be punished with imprisonment Any Mag. of either description for a term which may extend to Uncog. Punishment for committing mischief. three months, or with fine, or with both.

THE prisoners had cleared a piece of Government land, cutting down without per-the only loss mission and appropriating the trees thereon, and were convicted of theft under s. 379, and or damage of mischief under s. 425, and sentenced the first prisoner to one month's imprisonment caused is loss and a fine of Rs. 40, and the second prisoner to pay a fine of Rs. 10. Held that the con- or damage to victions and sentences were not illegal, as the mischief preceded the theft, which could not a private have been committed till the trees were severed from the ground.—Reg. v. NARAYAN person. KRISHRA 2 Bom. H. C. R. 392. [Couch, C.J., and Newton, J. June 27, 1866.]

WHERE a person levelled, filled up, and cultivated a watercourse over his own lands which conveyed water to the land of the prosecutor, it was held that this act was mischief within the meaning of s. 425, if the defendant knew that the prosecutor was entitled to the water, and that, by this act, his right would be obstructed. The authority vested in the Criminal Court of punishing persons for acts of mischief is one which must be exercised with great caution, and it must be very clear, before conviction, that the accused has brought himself within the meaning of s. 425.—IN THE MATTER OF RAM GOLAM SINGH, 6 W. R. 59; Wyman's Rev., Civ., and Crim. Rep. 47. [Loch and Jackson, JJ. Aug. 27, 1866.]

STEALING property, and then destroying it, are but one offence, vis., theft-not two, theft and mischief; but the fact that the offender has rendered the property irrecoverable should be considered in awarding punishment.—Crown v. Hamira, Panj. Rec., No. 37 of 1866.

A COURT-COPYIST obtained the file of a case from the record-officer by pretending that a copy of the decree was required. He afterwards returned the file, having abstracted and destroyed a receipt given by the decree-holder for the money paid by the defendant in satisfaction of decree. Held that he was guilty of mischief.—Crown v. TAHUL RAM, Panj. Rec., No. 112 of 1866.

S. 425 of the Penal Code supposes that the destruction was caused with the intention to cause wrongful loss or damage, and does not apply to cases of mere carelessness; and s. 17, Act III. of 1857, supposes the mischief (cattle-trespass) was done intentionally, and not by negligence—In re ARAZ SIRKAR, 10 W. R. 29. [Loch and Glover, J]. Aug. 21, 1868.

To constitute the offence of mischief according to the Penal Code, the act done must be shown to have caused destruction of some property, or such a change in the property or the situation of it as destroys or diminishes its value or utility, or affects it injuriously. The probable consequential damage to other property would not of itself constitute mischief.—PRO., Oct. 22, 1868, 4 Mad. H. C. R., Ap., 15.

A RIGHT of fishery was in dispute between the zamindar of Bali and the zamindar of Maharajpur. The former obtained a decree declaring the fishery to be his, in proceedings in which the latter was not a party. Thereupon, the servants of the zamindar of Bali removed a bamboo-bar which the Maharajpur people had erected to prevent the passage of

Bailable. Comp when

fish. For this removal the Bali people were convicted of mischief, and fined. On a reference to the High Court, it was held that the conviction could not tand, as the Maharajpur zamindar had not shown that he was legally entitled to the shery in dispute, and it did not appear that the defendants were acting otherwise than under a bond-fide belief that the Maharajpur people were encroaching on their master's rights. In so removing a bar which interfered with those rights, it could not be said that they acted with intent to cause, or knowing it to be likely that they would cause, wrongful loss to the opposing party.—Queen v. Denoo Bundhoo Biswas, 12 W. R. 1; 3 B. L. 2, A. Cr., 17. [Norman and Jackson,]]. June 1, 1869.]

The defendants were convicted of mischief under s. 427 of the Penal Code for grazing their cattle upon waste lands without payment of certain capitation-fees to which the prosecutor was entitled. Held that there was no evidence that the defendants caused fischief.—Pro., July 22, 1870, 5 Mad. H. C. R., Ap., 20.

To render a person liable under s. 425 of the Penal Code for mischief in consequence of damage done by cattle-trespass, he must in some way have daused the cattle to enter the prosecutor's fields, knowing that by so doing he is likely to cause damage. Mere neglect to keep the cattle from straying is not sufficient.—Forbes (MAJOR) v. Grish Chunder Bhuttacharjee, 14 W. R. 31; 6 B. L. R., Ap., 3. [Couch, C.]., and Jackson, J. Aug. 12, 1870.]

The accused were convicted of mischief. The facts were that, whilst the accused were employed in floating timber through a bridge, some of the logs struck against the arch of the bridge. *Held* that the conviction was bad.—Pro., Nov. 4, 1870, 5 Mad. H. C. R., Ap., 40.

THE mere fact of allowing cattle to stray, whereby damage is caused to the complainant, affords no evidence to support a conviction on the charge of mischief.—Pro., Nov. 10, 1871, 6 Mad. H. C. R, Ap., 36.

WITHOUT evidence that the accused intended, or knew that he was likely, to cause wrongful loss or damage to the complainant, the offence of mischief under s. 445 of the Penal Code was held not made out.—Kashi Nath Ghose v. Dinobundhoo Myter, 16 W. R. 62. [Kemp and Jackson, JJ. Dec. 2, 1871.]

A CONVICTION for mischief was quashed in a case where it appeared that the complainant had formerly destroyed crop belonging to the accused, and the latter, instead of complaining at once, merely bided his time, and then took the complainant's crop.—MAHOMED FOYAZ v. KHAN MAHOMED, 18 W. R. 10. [Kemp and Glover, J]. June 7, 1872.]

A DOUBLE sentence for theft and mischief is illegal and improper.—BICHUK AHEER T. AUHUCK BHOONEA, 6 W. R. 5. [Jackson and Campbell,]]. June 18, 1873.]

In a case in which the accused was charged with having cut and carried away bamboos, the right to which was disputed, it was held that he could not be convicted of mischief under s. 427 of the Penal Code.—Shakur Mamomed v. Chunder Mohun Shah, 21 W. R. 38. [Kemp and Glover, JJ. Jan. 28, 1874.]

DEFENDANTS were convicted of committing mischief under the following circumstances: During certain seasons of the year they received water through a certain shire for the irrigation of their lands. At another season the sluice was closed, and the water allowed to flow to the lands of other cultivators. The arrangement was prescribed by the Revenue Authorities, and the defendants violated it by opening their sluice during the seasons prescribed for the irrigation of the lands of the other cultivators. Held by the High Court that the conviction could not be sustained; that there had been no destruction of property, or diminution in the value or utility of property, by defendants, within the definition in s. 425 of the Penal Code.—Pro., Nov. 12, 1874, 7 Mad. H. C. R., Ap., 39.

A person commits mischief if he cuts trees on land which he claims, bushof which possession after an execution-sale has been legally made over to another person, without any objection or formal intervention on his part.—Sonal Sardar v. Bhuktar Sardar, 25 W. R. 46. [Kemp and Glover, J.]. May 12, 1876.]

Where an accused person had, at the instance of the Magistrate who had come across him while out walking one morning, been placed on his defence for mischief, and semmarily tried and sentenced to two months' rigorous imprisonment; and the Magistrate had, by a letter to the Registrar of the High Court, furnished the explanation that the ac-

cused had, while extending a garden, and laying the foundation of a house, encroached on the inner slope of a river embankment, and thereby endangered the safety of the whole station, held, firstly, that, in order to justify a conviction for the offence of mischief, it must appear that the accused person had done a particular act with intent to cause, or knowing it to be likely to cause, wrongful loss; and that, as the house and garden on which the accused was engaged would be the first to be swept away in the event of the dreaded breach in the bund and consequent irruption of the river, such guilty knowledge or intent could not reasonably be inferred on his part; and, secondly, that in a case of this kind, where Government had been made prosecutor, but no complaint had been offered to the Magistrate, who had acted on his own impulse, the Magistrate had erred seriously in dealing with the case summarily, and sentencing off the accused to imprisonment.—In the Matter of Prack Nath Shaha and Romanath Banerjee, 25 W. R. 69. [Jackson and McDonell, JJ. June 6, 1876.]

THE accused, A, C, and another, members of the Municipal Committee of Jalapur, permitted a tree within municipal limits to be cut for a public purpose against the order of the Municipal Committee as a body. Held that accused had not committed the offence of mischief as defined in s. 425.—AMIR CHAND v. CROWN, Panj. Rec., No. 9 of 1878.

If a person enters on land in the possession of another in the exercise of a bond-fide claim of right, and without any intention to intimidate, insult, or annoy such other person, or to commit an offence, then, though he may have no right to the land, he cannot be convicted of criminal trespass. So also, if a person deals injuriously with property in the bond-fide belief that it is his own, he cannot be convicted of mischief. The mere assertion, however, in such cases of a claim of right is not in itself a sufficient answer to charges of criminal trespass and mischief. It is the duty of the Criminal Court to determine what was the intention of the alleged offender; and, if it arrives at the conclusion that he was not acting in the exercise of a bond-fide claim of right, then it cannot refuse to convict the affender assuming that the other facts are established which constitute the offence. Where a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass, and at the same time committed mischief, held that such person could not, under cl. 3 of s. 454 of Act X. of 1872 (corresponding with s. 235 of Act X. of 1882), receive a punishment more severe than might have been awarded for either of such offences. The provisions of that law do not, in such a case, prohibit the Court from passing sentence in respect of each offence established.—Empress v. BUDH Singh, I. L. R., 2 All. 101. [Turner,]. Jan. 24, 1879.]

THE destruction of a document evidencing an agreement void for immorality may constitute the offence of mischief within the meaning of s. 426 of the Penal Code.—Reg. v. Vyapuri, I. L. R., 5 Mad. 401. [Kernan and Muttusami Ayyar. J]. July 11, 1882.]

THE owner of an animal who buries it after its death is not guilty of mischief or any to other offence, although he does so with the express object of preventing the Mahars of the village from taking its skin according to the custom of the country.—QUEEN-EMPRESS v. GOVINDA PUNJA, I. L. R, 8 Bom. 295. [West and Nanabhai Haridas, J]. Jan. 31, 1884.]

Where complainant had, for the purpose of removal, placed certain goods upon a cart, and accused came and unyoked the bullocks, and turned the goods off the cart on to the road, and complainant thereupon went away at once, leaving them there, held that, under these circumstances, a conviction under s. 341 of the Penal Code could not be sustained; but that there was such "mischief" as to bring the offence within s 425. Held also that s. 425 does not necessarily contemplate damage of a destructive character. It requires merely that there should be an invasion of right and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it.—In re Juggeshwar Dass: Juggeshwar Dass v. Koylash Chunder Chatterjee, I. L. R., 12 Cal. 55. [Garth, C.J., and Prinsep, Wilson, Field, and O'Kinealy, J.]. Sep. 4, 1885.]

The damage contemplated in s. 425 of the Penal Code need on necessarily consist in the infringement of an existing, present, and complete right, but it may be caused by an act done now with the intention of defeating and rendering infructuous a right about to come into existence. Any person who contracts to purchase property, and pays is a portion of the purchase-money, has such an interest in that property, although his title may not be complete, or his right final and conclusive, that the destruction of such property may cause to him wrongful loss or damage within the meaning of s. 425.—DHARMA DAS GROSE v. NUSSERUDIN, I. L. R., 12 Cal. 660. [Wilson and Porter,]]. April 14, 1886.]

FISH in a public river cannot be said to be property in the possession of the person who may have the fishery right, and the infringement of the right is not theft under s. 378 of the Penal Code. The accused were charged with unlawfully taking fish along with some eleven others in a public river, the right of fishing in which had been letoout by the Government to the complainant, and the lower Court, amongst other offences, convicted them of theft, criminal misappropriation, mischief, criminal trespass, and unlawful assembly. Held that the conviction was wrong, and that no offence had been committed.—Buaginan Dome v. Abar Dome, I. L. R., 15 Cal. 383. [Norris and Ghose, J]. Jan. 24, 1888.]

An accused person was convicted under s. 457 of the Penal Code of house-breeking by night in order to commit an offence (mischief and assault), and also under es. 425 and 352 for the offences of mischief and assault, and punished separately for each offence. These offences formed parts of one transaction. Held that the septences were level. QUEEN-EMPRESS v. NIRICHAN, I. L. R., 12 Mad. 36. [Kernan and Muttusami Ayjar,]. April 17, 1888.]

P M was convicted by a Magistrate under s. 425 of the Penal Code on a charge of mischief by tearing up a promissory note for Rs. 20. Held that the offence charged tell under s. 477 of the Penal Code, and was therefore triable by a Sessions Court only.— MADURAI, In re, I. L. R., 12 Mad. 54. [Wilkinson and Shephard, JJ. Sep. 11, 1888.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Comp. when * the only loss or damage caused is loss or damage to a private

person.

Committing mischief, and thereby causing damage to the amount of fifty rupees.

427. Whoever commits mischief, and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

HOUSE-TRESPASS and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly armed with deadly weapons, no separate convictions and sentences were deemed to be requisite.—Queen v. Someon NAPIT, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 15, 1865.]

THE defendants were convicted of mischief under s. 427 of the Penal Code for grazing their cattle upon waste lands without payment of certain capitation-less to which the prosecutor was entitled. Held that there was no evidence that the defendants caused mischief .- Pro., July 22, 1870, 5 Mad. H. C. R., Ap., 29.

THE mere fact of allowing cattle to stray, whereby damage is caused to the complainant, affords no evidence to support a conviction on the charge of mischief.—Pro., No v 10, 1871, 6 Mad. H. C. R., Ap., 37.

Presy, Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

Mischief by killing or maiming any animal of the value of ten rupees.

428. Whoever commits mischief by killing, poisoning, maining, or rendering useless, any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ct. of Ses., Presy. Mag., or 2nd class. Cognizable. Warrant. Bailable. Not comp.

429. Whoever commits mischief by killing, poisoning, maiming, or ren-Presy. Mag., Mischief by killing or maim-or Mag. ot 1st ing cattle, &c. or any animal dering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value of the value of fifty rupees. thereof, or any other animal of the value of fifty rupees of upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

> SEPARATE convictions and sentences under ss. 429 and 379, and under ss. 457 and 380 of the Penal Code, were set aside, and the convictions under s. 429, in the former case, and under s. 457 in the latter, allowed to stand.—QUEEN v. SAHRAE, 8 W. R. 31.— [Jackson and Hobhouse, JJ. July 1, 1867.]

> A BULL dedicated to an idol, and allowed to roam at large, is not fera besti, and therefore res nullius, but prima facie, the trustee of the temple, where the idol is worshipped. has the rights and liabilities attaching to its ownership.—QUEEN EMPRESS-V. NALLA, I. L. R., 11 Mad. 145. [Muttusami Ayyar and Brandt, JJ. Sep. 13, 1887.]

480. Whoever commits mischief by doing any act which causes, or which Ct. of Ses., he knows to be likely to cause, a diminution of the Presy. Mag., supply of water for agricultural purposes, or for lood or 2nd class. Mischief by injury to works e inigation or by wrongfully water. or drink for human beings, or for animals which are Cognizable. property, or for cleanliness, or for carrying on any manufacture, shall be pun-Bailable.

Bailable.

Not comp. five years, or with fine, or with both.

there by the majority of a Full Bench (Innes, J., dissenting) that it is not part of the offence of causing a diminution of water supply for agricultural purposes that the act of the accused should be a mere wanton act of waste. It is sufficient that the act is done without any show of right. - RAMAKRISHNA CHETTI v. PALANYANDI KUDAMBAR, I. L. R., 1 Mad. 262. [Morgan, C.J., and Holloway, Innes, Kernan, and Kindersley, JJ. Nov. 🌺 1876.]

WHERE, upon the evidence, it appeared that the complainant was the exclusive owner of a water course, and that the accused had no sort of right to assert any claim to it, the causing of a diminution of the supply of water by the accused, even though in the assection of a right, was held to be only an additional wrong, and to constitute mischief within the meaning of s. 430 of the Penal Code. Ram Krishna Chetti v. Palanyandi Kudambar (I. I., R., 1 Mad. 262) followed.—QUEEN-EMPRESS v. JAGGANNATH BHIKAJI BHAVE, I. L. R., 10 Bom. 183. [Birdwood and Wedderburn, JJ. Oct. 29, 1885.]

431. Whoever commits mischief by doing any act which renders, or . Ditto. which he knows to be likely to render, any public Mischief by injury to public road, bridgepor river. road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

482. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, an inundation or an Mischief by causing inundaobstruction to any public drainage attended with intion or obstruction to public drainage attended with dajury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

463. Whoever commits mischief by destroying of moving any light-house Ct. of Ses. or other light used as a sea-mark, or any sea-mark Cognizable.

or buoy or other thing placed as a guide for navigaBailable. Mischief by destroying or moving, or rendering less use-lul, a light-house or sea-mark. tors, or by any act which renders any such light-house, Not comp. sea-mark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

484. Whoever commits mischief by destroying or moving any land-mark Presy. Mag. schief by destroying or fixed by the authority of a public servant, or by any or Mag. of 1st Mischief by destroying or moving, &c., a land-mark fixact which renders such land-mark less useful as such, or 2nd class. Uncog. shall be punished with imprisonment of either de Warrant. ed by public authority. scription for a term which may extend to one year, or with fine, or with both.

Mischief by fire or explosive amount of one hundred rupees or upwards, "or Not comp. (where the property is agricultural produce) ten rupees

Ditto.

485. Whoever commits mischief by fire or any explosive substance, in- Ct. of Ses. tending to cause, or knowing it to be likely that the Cognizable. will thereby cause, damage to any property to the Bailable.

substance with intent to cause damage to samount of one hundred rupees.

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or upwards,"* shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 435 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), 2. 44.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp. 486. Whoever commits mischief by fire or any explosive substance inMischief by fire or explosive substance intending to cause, or knowing it to be likely that he sive substance with intent to will thereby cause, the destruction of any building which is ordinarily used as a place of worship, or as a human dwelling, or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 436 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44-

In a case of mischief by fire with intent to cause the destruction of a dwelling-house, the charge should lay the intent as an intent to cause the destruction, not of a house simply, but of a house used as a human dwelling.—QUEEN v. DURBAROO POLIE, 8 W.R. 30. [Hobhouse, J. June 29, 1867.]

Held by Glover, J., that incendiarism having, on several occasions, occurred in a village, produced by a ball of rag with a piece of burning charcoal within it, and the prisoner one evening being discovered to have a ball of that description concealed in his dhoti, which contained burning charcoal, he is, under s. 511, guilty of an attempt to commit mischief by fire. The possession of the instrument to commit mischief by fire, and the going about of the person with it, are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt. Held by Mitter, J., that the possession of a fireball and moving about with it cannot support a conviction under ss. 436 and 511. These facts are not sufficiently indicative of an intention to destroy a building used for human dwelling. To constitute an offence under s. 511, it is not only necessary that the prisoner should have done an overt act towards the commission of the offence, but that the act itself should have been done in the attempt to commit it.—Queen v. Doyal Bawri, 3 B. L. R., A. Cr., 55. [Glover and Mitter, JJ. Sep. 1, 1869.]

Ditto.

487. Whoever commits mischief to any decked vessel, or any vessel of a burden of twenty tons or upwards, intending to destroy or make unsafe a decked vessel or one of 20 tons burden.

Stroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be

Ditto.

liable to fine.

488. Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and

* The words quoted have been inserted by Act VIII. of 1883, s. 10.

[442 .]

shall also be liable to fine.

3489. Whoever intentionally runs any vessel aground or ashore, intending Ct. of Ses

Punishment for intentionally running vessel aground or ashere with intent to commit that, acc.

to commit theft of any property contained therein, Cognizable, or to dishonestly misappropriate any such property, Not bailable, or with intent that such theft or misappropriation of Not comp. property may be committed, shall be punished with scription for a term which may extend to ten years.

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Moever commits mischief, having made preparation for causing to make from the committed after any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall the rhurt.

for a term which may extend to five years, and shall also be liable to fine.

Ditto.

OF CRIMINAL TRESPASS.

Criminal trespass.

with intent to commit an offence, or to intimidate, insult, or annoy any person, in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass."

In this section the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—S. 40, Penal Code.

A RERSON who forcibly enters upon property in the possession of another, and erects a bailding thereon, or does any other act with intent to annoy the person so in possession, is guilty of criminal trespass within the meaning of s. 441 of the Penal Code without reference to the question in whom the title to the land may ultimately be found.—QUEEN v. RAM DYAL MUNDLE, 7 W. R. 28. [Kemp and Markby, J]. Feb. 4, 1867.]

In order to convict of criminal trespass under s. 441 of the Penal Code, it must be proved that the property was in the possession of the prosecutor, and that the entry was made with intent to "commit an offence, or to intimidate, insult, or annoy any person in possession of the property."—In re Kalinath Nag Chowdhry, 9 W.R. 1. [Kemp and Mitter, JJ. Dec. 21, 1867.]

Where the accused secretly entered an exhibition building without having purchased a ticket, and was there apprehended, it was held that such act did not amount to the offerices cheating under s. 415 of the Penal Code. Such entry, when unaccompanied by
any of the intents specified in s. 441 of the Penal Code, does not amount to criminal trespass or any other offence.—Reg. v. Mehervanji Bajanji, 6 Bom. H. C. R. 6. [Tucker
and Warden, JJ. Feb. 11, 1869.]

HELD by Jackson, J. (setting aside the order of the Magistrate, Markby, J., dissenting), that a Magistrate ought not to decline to go into a case of criminal trespass under 4.41 of the Penal Code, because the complainant did not make out his title to the land; the offence may be committed in respect of property in a person's possession, even though such possession may not have originated in right.—QUEEN v. SURWAN SINGH, IT W. R. II. [Jackson and Markby, JJ. Feb. 17, 1869.]

It is essential to a conviction for criminal trespass under s. 441 of the Penal Code that there should be the intent to commit an offence, or to intimidate, insult, or annoy any person.—QUEEN v. CHOORAMONI SANT, 14 W. R. 25. [Jackson and Mitter, J]. July 30, 1870.]

THE accused were convicted of criminal trespass under s. 441 of the Penal Code for driving their carts across an open green in violation of an order issued by the Municipal Commissioners. Held that there was nothing to show that the Municipal Commissioners had anthority to issue such an order, and that the breach of it was not criminally punish. able.—Pro., Oct. 28, 1870, 5 Mad. H. C. R., Ap., 38.

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ACCUSED was ejman of complainant's family. Complainant obtained a decree setting aside an alienation made by accused. In execution, complainant obtained possession from the alienes. The accused entered on this land. Held that he had not committed the offence of criminal trespass.—Pro., Feb. 10, 1871, 6 Mad. H. C. R., Ap., 19.

An intention to intimidate, insult, or annoy any person in possession of a house, does not mean to insult or annoy any person in constructive, but in actual, possession of the premises.—ISHUR CHUNDER KURMOKAR v. SERTUL DASS MITTER, 17 W. R. 47; 8 B. L. R., Ap., 62. [Couch, C.J., and Ainslie, J. April 6, 1872.]

To bring an act of trespass within the meaning of the Penal Code, s. 441, the entry upon the land must be with the intent to annoy, which means with the purpose of annoying the person in possession.—In the Matter of Shib Nath Banerjee, 24 W. R. 58. [Phear and Lawford,]]. Oct. 1, 1875.]

A PERSON plying a boat for hire at a distance of three miles from a public ferry cannot be said, with reference to such ferry, to commit "criminal trespass" within the meaning of that term in s. 441 of the Penal Code. If, when directed by the order of a public servant, duly promulgated to him, to abstain from plying a boat for hire wor in the immediate vicinity of a public ferry, a person disobeys such direction, he renders himself liable to punishment under the Penal Code.—MUTHRAT. JAWAHIR, I. L. R., I Alt. 547. [Spankie. J. Dec. 15, 1877.]

BLGA ENTRY into a local fund market with intent to evade payment of market dues is not criminal trespass.—Reg. v. Varthappa, I. L. R., 5 Mad. 382. [Muttusami Ayyar and Tarrant, JJ. Aug. 29, 1882.]

WHEN a stranger, uninvited and without any right to be there, effects an entry in the middle of the night into the sleeping apartment of a woman, a member of a respectable household, and, when an attempt is made to capture him, uses great violence in his efforts to make good his escape, a Court should presume that the entry was made with an intent such as is provided for by s. 441 of the Penal Code. An accused person in the middle of the night effected an entry into a house occupied by two widows, members of e respectable On an alarm being given, and an attempt made to capture him, he made use of great violence, and effected his escape. Upon these facts he was charged with offences under ss. 456 and 323 of the Penal Code. The defence set up was an alibi, which was disbelieved by both the lower Courts. Neither Court found specifically what was the intention with which the accused entered the house, but it was suggested that it was probably for the purpose of prosecuting an intrigue with one of the women. There was no evidence that he had been invited by her to go there. The lower Courts convicted the accused under s. 456. It was contended that, as the prosecution had failed to prove that the entry was made with intent to commit any offence, the conviction was illegal. Held that, under the circumstances of the case, the Court ought to presume that the entry was effected with such intent as is provided for by s. 441, and that the conviction should be upheld.—In re KOILASH Chandra Chakrabarty: Kullash Chandra Chakrabarty v. The Queen-Empress, I. L. R., 16 Cal. 657. [Prinsep and Hill, J]. May 20, 1889.]

442. Whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Prisoner was convicted of house-breaking, his object being to have sexual intercourse with complainant's wife. Held conviction valid.—Pro., Feb. 26, 1875, 8 Mad. Hy C. R., Ap., 6.

Where a person entered into a havalat with intent to convey or attempt to convey food to an under-trial prisoner, such act on his part did not amount to house-trespass within the meaning of s. 442 of the Penal Code, and it was not an act punishable under s. 45 of the Prisons Act. Per Spankie, J., contra. Per Stuart, C. J., that the fact that such person had been tried for house-trespass and acquitted was no bar to his being tried subsequently for an offence under s. 45 of the Prisons Act.—Empress v. Lalai, I. L. R. 2 All. 301. [Stuart, C.J., and Spankie and Oldfield, JJ. May 16, 1879.]

ACCUSED, with intent to commit theft entered at night a dalan or entrance-hall, surrounded by a wall in which there were two door-ways, but without doors, which was used for the custody of property. Held that the dalan was a building within the meaning of ss. 350 and 442, and that a conviction under s. 457 was therefore maintainable.—Dad v. Crown, Panj. Rec., No. 10 of 1879.

A COURT-YARD consisting of a walled enclosure with four kotahs or chambers opening into it, and an outer door or gate leading into a side street, was held by a majority of the Court (Plowden, J., dissenting) to be a "building" within the meaning of s. 442.—Shera s. Empress, Panj. Rec., No. 35 of 1879.

- Larking house-trespass. Ceal such house-trespass from some person who has a right to exclude or eject the trespasser, from the building, tent, or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."
- 444. Whoever commits lurking house-trespass after sunset and before Larking house-trespass by sunrise is said to commit "lurking house-trespass by night."
- 445. A person is said to commit "house breaking," who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—
- Figst. If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Seconding—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

. Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself-or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

- (a.) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.
- (b.) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

- (A) A commits house-trespass by entering Z'shouse through a window. This is house-breaking.
- (d.) A commits house trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.
- (e.) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.
- (f.) A finds the key of Z's house-door which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.
- (g.) Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.
- (h.) Z, the door-keeper of Y, is standing in Y's door-way. A commisshouse-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

Rulings.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

Effecting an entrance into a house at night by scaling a wall constitutes house-

breaking by night under s. 445 of the Penal Code.—QUEEN v. EMDAD ALLY, 2 W. R. 65. [Glover, J. April 24, 1865.]

When the door of a shop was found broken open, held that the conviction should

WHEN the door of a shop was found broken open, held that the conviction should have been for house-breaking by night, and not simply lurking house-trespass by night.

—QUEEN v. KENARAM BOUSEE, 4 W. R. 19. [Glover, J. Oct. 25, 1865.]

WHEN a prisoner convicted of "house-breaking in order to commit theft" and of "theft," both offences being portions of one continuous criminal act, was sentenced, on the first head of charge, to one year's rigorous imprisonment under s. 457 of the Penal Code, and on the second head of charge, to receive twenty stripes under s. 2 of the Whipping Act (VI. of 1864), the separate sentences, though not illegal, were disapproved of as contrary to the spirit and intention of the Whipping Act.—Reg. v. Grau Bin Aru, 5 Bom. H. C. R. 83. [Couch, C. J., and Newton,]. Sep. 16, 1868.]

House-breaking by night.

446. Whoever commits house-breaking after sunset and before sunrise is said to commit "house-breaking by night."

447. Whoever commits criminal trespass shall be punished with imprisonPunishment for criminal ment of either description for a term which may extrespass. tend to three months, or with fine which may extend to five hundred rupees, or with both.

The entry by one man on another's property accompanied by the cutting down of trees in that property is criminal trespass.—QUBEN v. JEENUT BEBEE, 1 W. R. 46. [Kemp and Glover, J]. Dec. 21, 1864]

THE prisoner entered a house for the purpose of committing an assault, and in earrying out that intention, caused grievous hurt. In convicting and punishing him for the substantive offence (grievous hurt), held that it was not necessary to pass a separate sentence for the offence of house-trespass.—QUEEN v. Bassoo RANNAH, 2 W. R. 29. [Kemp and Glover, JJ. Jan. 30, 1865.]

WHERE a constable and others enter a house and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others.—Govr. v. Mahomed Hossein, 5 W. R. 49. [Norman and Campbell, J]. Mar. 5, 1866.]

THE order of the Magistrate directing the prisoner, on the expiration of his sentence for the offence of criminal trespass, to execute personal recognizances to keep the peace, was upheld as legal and necessary.—QUEEN v. GENDOO KHAN, 7 W. R. 14. [Kemp and Glover, J.]. Jan. 21, 1867.]

[446]

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Cognizable. Summons. Bailable. Comp.

Any Mag.

HELD by Jackson, J. (setting aside the order of the Magistrate, Markby, J., dissenting), that a Magistrate ought not to decline to go into a case of criminal trespass under s. 441 of the Penal Code, because the complainant did not make out his title to the land: the offence may be committed in respect of property in a person's possession, even though such possession may not have originated in right.—Queen v. Surwan Singh, II W. R. II. [Jackson and Markby, JJ. Feb. 17, 1869]

Where the trespass (if any) was not committed with the intent to commit an offence, or to intimidate, insult, or annoy the person in possession, but in the bond-fide assertion of actiaim of title, this does not amount to criminal trespass.—Queen on the Prosecution of Gokul Chund v. Seith Roshun Lal, 2 N.-W. P. 82. [Turner and Spankie, JJ. Feb. 11, 1870.]

THE defendant was convicted under s. 447 of the Penal Code for cultivating village waste land which he had been ordered by the Subordinate Collector to refrain from cultivating. The High Court upheld the conviction.—Pro., Feb. 15, 1870, 5 Mad. H. C. R., Ap., 17.

THE accused were convicted of criminal trespass under s. 443 of the Penal Code for driving their carts across an open green in violation of an order issued by the Municipal Commissioners. Held that there was nothing to show that the Municipal Commissioners had authority to issue such an order, and that the breach of it was not criminally punishable.—Pro., Oct. 28, 1870, 5 Mad. H C. R., Ap., 38.

To bring a case under the definition of trespass in s. 441 of the Penal Code, the entry must be made with the intent to commit an offence, or to intimidate, insult, or annoy. One member of a joint family commits no trespass by entering the house which forms the joint property, but he is guilty of that offence when he enters the room ordinarily occupied by another member of the family.—Prankristo Chunder v. Bissonath Chunder v. Bissonath Chunder v. Bissonath Chunder v. Bissonath Chunder v. 15 W. R. 6; 6 B. L. R., Ap., 80. [Norman, Offg. C. J., and Loch, J. Jan 21, 1871.]

Defendant was convicted of criminal trespass for having enclosed and commenced to cultivate a portion of a burial-ground. Held that the conviction was right. The person (corporate) in possession of the burial-ground is the portion of the public entitled to use the burial-ground, and the act of ploughing up the burial-ground was evidence of intent to annoy such person, the defendant not being one of the portion of the public entitled to its use.—Pro., Mar. 28, 1871, 6 Mad. H. C. R., Ap., 25.

DEFENDANT was convicted of criminal trespass for including in his own land a portion of a public footpath. Held that, as the public generally were entitled to the use of the footpath, there was no illegal entry by the defendant on property in the possession of another with intent to annoy the person in possession, and consequently that the defendant was wrongly convicted.—Pro., May 25, 1871, 6 Mad. H. C. R., Ap., 26.

In the definition of criminal trespass, the entry and the intention with which a party enters are the essentials. Thus, where A and B all along asserted their prescriptive right to fish in a lake free of rent, and C had failed to establish the relationship of landlord and tenant. In a suit brought by him under Act X. of 1859 to get rent from them, held that no conviction for criminal trespass could be had against A and B, and that C's remedy was by suit in the Civil Court, either to eject them if he treated them as trespassers, or to have them declared liable to pay him rent for the future.—Sristedhur Paroos v. Indro Bhoosun Chuckerbutty, 18 W. R. 25; 9 B. L. R., Ap., 19. [Kemp and Glover, J]. July 2, 1872.]

On a conviction for criminal trespass under s. 447, Penal Code, the Joint-Magistrate added to the sentence of imprisonment an order that the prisoners should give recognizances to keep the peace. The Sessions Judge recommended that the order as to recognizances should be quashed, as criminal trespass was not one of the offences detailed in s. 480 of Act X. of .1872 (corresponding with s. 106 of Act X. of .1882) for which such recognizance could be taken. The High Court declined to act on this recommendation, holding that there was nothing illegal in the Joint-Magistrate's order, the conduct of the accused clearly pointing to an intention to commit a breach of the peace.—QUEEN v. JHA-POO, 20 W. R. 37. [Markby and Birch, J]. June 16, 1873.]

THE unlawful infringement of a right of exclusive fishery in a part of a public river is not an offence which can he brought within the definition of "criminal trespass" in the Penal Code.—EMPRESS v. CHARU NAYIAH, I. L. R., 2 Cal. 354. [Markby and Prinsep,]]. May 4, 1877.]

ACCUSED for several years cultivated land under a lease from the Forest Department which was renewed annually. During the period of his occupation accused built a dwelling-house, and made other improvements. The Forest Department requiring the land for conservation, accused was served with notice of ejectment, and he was told to remove the materials of his house. Accused refused to relinquish the land until payment of compensation for his improvements, whereupon he was criminally prosecuted by the Forest Department, and convicted by the Tahsildar of Kharian of criminal trespass under s. 447. Heid that the conviction was illegal. In order to sustain a conviction for criminal trespass, it must be shown that the property was in the possession of some person other than the alleged trespasser.—Crown v. Foujdar, Panj. Rec., No. 28 of 1878.

Where the accused persons (execution creditors), in company with an authorized bailiff, broke open complainant's door before sunrise, with intent to distrain his property, for which they were convicted on a charge of lurking house-trespass by night or house-breaking by night, held that, as they were not guilty of the offence of criminal trespass, there being no finding of any such intent as is required to constitute that offence, and that as criminal trespass is an essential ingredient of either of the offences with which they were charged, the conviction must be quashed.—In the Matter of Jotharam Davey, I. L. R., 2 Mad. 30. [Innes and Muttusami Ayyar, J]. Sep. 27, 1878.]

If a person enters on land in the possession of another in the exercise of a bond-fide claim of right, and without any intention to intimidate, insult, or annoy such other person, or to commit an offence, then, though he may have no right to the land, he cannot be convicted of criminal trespass. So also, if a person deals injuriously with property in the bond-fide belief that it is his own, he cannot be convicted of mischief. The mere assertion, however, in such cases of a claim of right is not in itself a sufficient answer to charges of criminal trespass and mischief. It is the duty of the Criminal Court to determine what was the intention of the alleged offender, and if it arrives at the conclusion that he was not acting in the exercise of a bond-fide claim of right, then it cannot refuse to convict the offender, assuming that the other facts are established which constitute the offence. Where a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass, and at the same time committed mischief, held that such person could not, under cl. 3 of s. 454 of Act X. of 1872 (corresponding with cl. 3 of s. 235 of Act X. of 1882), receive a punishment more severe than might have been awarded for either The provisions of that law do not in such a case prohibit the Court of such offences. from passing sentence in respect of each offence established.—EMPRESS v. BUDH SINGH, I. L. R., 2 All. 101. [Turner, J. Jan. 24, 1879.]

A, who had been warned off the lands of B, subsequently, having shot a deer near the boundary of B's land, and the deer having run on to B's land, followed it on to such land for the purpose of killing it. Held that his doing so was not a criminal trespass.—In re Chundoo Narain v. Farquharson (J. G.), I. L. R., 4 Cal. 837. [Birch and Mitter. J]. Mar. 28, 1879.]

CERTAIN immoveable property was the joint undivided property of C, G, and accertain other person. R obtained a decree against G for the possession of such property, and such property was delivered to him in the execution of that decree in accordance with the provisions of s. 264 of Act X. of 1877. C in good faith, with the intention of asserting her right, and without any intention to intimidate, insult, or annoy R, or to commit an offence, and G, in like manner, with the intention of asserting the right of his co-owners, remained on such property. Held that, under such circumstances, they could not be convicted of criminal trespass. Re-entry into, or remaining upon, land from which a person has been ejected by civil process, or of which possession has been given to another for the purpose of asserting rights he may have solely or jointly with other persons, is not criminal trespass, unless the intent to commit an offence, or to intimidate, insult, or annoy, is conclusively proved.—In re Govind Prasad, I. L. R., 2 All. 465. [Straight, J. Oct. 15, 1879.]

A, THE servant of B, was convicted of criminal trespass, in going upon the fand of C. one of B's tenants, and preventing him from cutting his crops. B was convicted of abetmant of criminal trespass. A and B pleaded that they were acting in the exercise of the legal right of distraint. It appeared that no written demand under s. 72 of the Rent Act (Ben. Act VIII. of 1869) for the amount of the arrears, together with an account exhibiting the grounds on which demand had been 'made, was served on' C, and that no written authority under s. 76 had been given by B to A. Held that it lay upon A and B to show

that they had conformed to the provisions of the law, or at least had acted with the bond-side intention of distraining the complainant's crops; and that the conviction was right. Held also that, as under s. 74, standing crops and ungathered products may, notwithstanding distraint, be reaped and gathered by the cultivator, A had no right, even if he was acting bond fide, to restrain C from cutting his crops.—JHUMUK NONIAH v. SHUDASHIB Roy, I. L. R., 7 Cal. 26. [Pontifex and Field, JJ. Mar. 31, 1881.]

A PLEA of right to possession is no answer to a charge of rioting by making a forcible entry on land cultivated by a trespasser, who is in possession, and opposes the entry.

—APPAVU 2. QUEEN, I. L. R., 6 Mad. 245. [Innes, J. Dec. 19, 1882.]

Fight in a public river cannot be said to be property in the possession of the person who may have the fishery right, and the infringement of that right is not theft under s. 378 of the Penal Code. The accused were charged with unlawfully taking fish, along with some eleven others, in a public river, the right of fishing in which had been let out by the Government to the complainant, and the lower Court, amongst other offences, convicted them of theft, Criminal misappropriation, mischief, criminal trespass, and unlawful assembly. Held that the conviction was wrong, and that no offence had been committed.

—Busgiram Dome v. Abar Dome, I. L. R., 15 Cal. 388. [Norris and Ghose, J]. Jan. 24, 1888.]

Accused were charged with having taken fish from a tank belonging to the complainant, and convicted of theft and criminal trespass under ss. 379 and 447 of the Penal Code. It was found that the tank in question was not enclosed on all sides, and was dependent on the everflow of a neighbouring channel which was connected with flowing streams for its supply of fish; that the fish were not reared and preserved in the tank; and that the occurrence complained of took place at a time when the floods were high, and the tank was connected with the streams, so that the fish could leave it at pleasure. Held that the fish were force nature and not in "the possession of" the complainant, and consequently no offence had been committed. Held further that, had the fish been taken at a time when they were restrained of their natural liberty, and were liable to be taken at the pleasure of the tank, the conviction would have been upheld. The Meherpore case of 1887 (I. L. R., 15 Cal. 402. [Norris and Ghose, JJ. Jan. 24, 1888.]

During the pendency of a civil suit, certain persons, on behalf of the plaintiff, went on to the premises belonging to the defendant for the purpose of making a survey, and for getting materials for a hostile application against the defendant. They went (some of them armed) without the permission of the defendant, and in his absence, and when the defendant's servants objected to their action, they persisted in their trespass, and endeavoured to prevent opposition by making false statements as to the authority under which they were acting. Held that their actions amounted to criminal trespass.—Golla Pandey v. Bodlan, I. L. R., 16 Cal. 715. [Trevelyan and Beverley, J]. June 3, 1889.]

Punishment for house-trespass shall be punished with imprison-Any Mag.

Punishment for house-trespass shall be punished with imprison-Any Mag.

Cognizable.

Warrant.

Tend to one year, or with fine which may extend to Bailable.

Comp.

THE Prisoner entered a house for the purpose of committing an assault, and, in carrying out that intention, caused grievous hurt. In convicting and punishing him for the submittive offence (grievous hurt), held that it was not necessary to pass a separate sentence for the offence of house-trespass.—QUBEN v. BASSOO RANNAH, 2 W. R. 29. [Kemp and Glover, J. Jan. 30, 1865.]

HOUSE-TRESPASS and mischief, not being separate offences, but being included in the grave offence of being members of an unlawful assembly, armed with deadly weapons, no separate convictions and sentences were deemed to be requisite.—QUEEN v. SURROOP NAPIT, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 15, 1865.]

A ENTERED the house of B without the latter's permission, and committed adultery with B's wife. Held that A could be separately convicted of, and punished for, both the adultery and house-trespass, as they were distinct offences; but that, under the circumstances, B's wife was by law incapable of committing abetment of the house-trespass.—Crown v. Sheikh Mungli, Panj. Rec., No. 5 of 1871.

[P. C. 98.]

A PRISONER charged with dacoity and riot, and acquitted, cannot be convicted of house-trespass, if the latter charge was not read out or explained to him, and he was not called on to plead to it.—Queen v. Salamur Ali, 23 W. R. 59. [Kemp and Morris, J]. Mar. 31, 1875.]

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp,

449. Whoever commits house-trespass in order to the committing of any offence punishable with death shall be punished House-trespass in order to commit offence punishable with transportation for life, or with rigorous impriwith death. sonment for a term not exceeding ten years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 440 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention—Crim. Pro. Code (Act X. of 1882), 44.

Ditto.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life shall be punished with imprisonment of either description House-trespass in order to commit offence punishable for a term not exceeding ten years, and shall also be with transportation for life. liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 450 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44-

Any Mag. Cognizable. Warrant. Bailable. Not comp. * Ct. of Ses., Presy. Mag., or Mag. of 1st or and class. Cognizable. Warrant. Not bailable.

Not comp.

451. Whoever commits house-trespass in order to the committing of any offence punished with imprisonment shall be House-trespass in order to the commission of an offence punished with imprisonment of either description for punishable with imprisonment. a term which may extend to two years, and shall also be liable to fine; and if the offence* intended to be committed is theft, the term of the imprisonment may be extended to seven years.

A CHARGE under s. 451 must charge the accused with committing house-trespass with intent to commit some specific offence punishable with imprisonment.—QUEEN v. MEHAR DOWALIA, 16 W. R. 53. [Kemp, Offg. C.J., and Ainslie, J. Oct. 6, 1871.]

A CHARGE of house-trespass with intent to commit adultery can be entertained without a complaint by the husband or the person having care of the woman. (Per Lindsay and Plowden, JJ., Fitzpatrick, J., dissenting)—Crown v. Subz Ali, Panj. Rec., Nov 2 of 1877.

Ct. of Ses., or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

452. Whoever commits house trespass, having made preparation for caus-Presy. Mag., House-trespass after prepa-or Mag. of 1st ration made for causing hurt ing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putto any person. ting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

> WHERE A goes with a forged warrant of arrest into a house, and takes away one of the inmates against his will under the authority of such warrant, he is guilty of house-trespass by putting such person in fear of wrongful restraint under s. 452 of the Penal Code.-QUEEN v. NUNDO MOHUN SIRCAR, 12 W. R. 33. [Kemp and Glover, J]. July 15, 1869.]

Presy. Mag. or Mag. of 1st or and class. Cognizable. Warrant. Not bailable. Not comp.

Punishment lurking house-trespass housebreaking.

453. Whoever commits lurking house trespass or house-breaking shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

454. Whoever commits lurking house-trespass or house-breaking in order Ct. of Ses., to the committing of any offence punishable with Presy. Mag ; Lurking house-trespass or imprisonment shall be punished with imprisonment or Mag. of ist or and class. house-breaking in order to of either description for a term which may extend Cognizable, with imprisonment.

of either description for a term which may extend Cognizable, to three years, and shall also be liable to fine; and Not bailable, Not comp.

may be extended to ten years.

PRISONER was convicted of house-breaking, his object being to have sexual intercourse, with complainants wife. Held conviction valid.—Pro., Feb. 26, 1875, 8 Mad. H. C. R.,

HOUSE-BREAKING by night and theft form a single and entire offence, and cannot be punished separately.—Queen v. Tonaokoch, 2 W. R. 63. [Jackson and Glover,]]. April 19, 1865 🔓

UNDER SS. 35 and 235 of the Criminal Procedure Code, a Magistrate may legally pass a separate sentence of two years' rigorous imprisonment and fine under each of the ss. 370 or 380 and 454 of the Penal Code for house-breaking in order to the commission of theft and theft, the two offences forming part of the same transaction, and being tried together. In such a case, where the prisoner had been three times previously convicted, held that the better course would have been to commit him to the Court of Session under ss. 454-57 of the Code. But a Sessions Judge trying such a case under s. 379 or 380 and s. 454 would, under no circumstances, be justified in passing a sentence of ten years' imprisonment under the latter part of s. 454, and of four years' imprisonment under s. 380. The latter portions of ss. 454 and 457 were framed to include the cases of house-trespassers and house-breakers who had not only intended to commit, but had actually committed, theft.

Queen-Empress v. Ajudhia (I. L. R., 2 All. 644), and Queen-Empress v. Sakharam Bhau

I. L. R., 10 Bom. 493) referred to.—Queen-Empress v. Zor Singh, I. L. R., 10 All. 146. Straight and Brodhurst, JJ. Dec. 16, 1887.

455. Whoever commits lurking house-trespass or house-breaking having Ct. of Ses., made preparation for causing hurt to any person, or Presy. Mag., Lurking house-trespass or for assaulting any person, or for wrongfully restrain- or Mag. of ist class. house breaking after preparation for hurt. ing any person, or for putting any person in fear of Cognizable. hurt, or of assault, or of wrongful restraint, shall be punished with imprison. Warrant. ment of either description for a term which may extend to ten years, and shall Not comp. also be liable to fine.

. 456. Whoever commits lurking house-trespass by night, or house-break- Ct. of Ses., unishment for lurking ing by night, shall be punished with imprisonment Presy. Mag., for , lurking of either description for a term which may extend of Mag. of ist or 2nd class. house-trespass or phousebreaking by night. to three years, and shall also be liable to fine.

Cognizable.

EVERY person, whether within or without the Presidency-towns, aware of the com- Not bailable. mission of, of of the intention of any other person to commit, any offence punishable un- Not comp. der s. 456 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

A PRISONER may be convicted of theft in a building and of house-breaking by night with intent to commit theft, though, if the Judge considers the punishment for the first offence sufficient, he need not award any additional sentence for the second. -QUEEN v. Tincowree, W. R., Sp., 31. [Jackson, J. May 11, 1864.]

Five men armed were discovered committing an act of house-breaking by night. One of the parties was engaged in cutting a hole through the wall, while the others stood on guard. When the alarm was given, the neighbours ran up, and one of the robbers cut down one of the villagers. The robbers effected their escape, not however before two of them were identified, the prisoners in the case. Held that the crime of which the prisoners were guilty was house breaking by night, and not dacoity.—QUEEN v. REWUT RAJ. . WAR, W. R., Sp., 39. [Loch, Seton-Karr, and Jackson. JJ. July 19, 1864.]

(45 I

HOUSE-BREAKING by night and theft form a single and entire offence, and cannot be punished separately.—QUEEN v. TONAOKOCH, 2 W. R. 63; 4 R. J. P. J 563 [Jackson and Glover, JJ. April 19, 1865.]

A PERSON convicted of house-breaking, followed immediately by theft, is punishable only under s. 457 of the Penal Code.—QUEEN v. CHYTUN BOWRA, 5 W. R. 49. [Jackson and Glover, []. Mar. 5, 1866.]

THE splitting up of one aggravated offence into separate minor offences (e.g., a conviction for lurking house trespass and theft under ss. 456 and \$80 of the Penal Code, instead of for lurking house-trespass in order to commit theft under s 457) prohibited. Where a Magistrate convicted under ss. 456 and 380, it was held that the Judge, on appeal, instead of setting aside the conviction, and sending the case back to the Magistrate for retrial under ss. 457 and 380, ought only to have set aside the conviction under s. 380. and allowed the conviction lunder s. 456 to stand (Norman, J, dubitante).—QUEEN v. RAM CHURN KAIREE, 6 W. R. 39. [Peacock, C.J., and Norman, Kemp, Seton-Karr, and Campbell, JJ. July 9, 1866.]

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Gognizable. Warrant. Not bailable. Not comp.

457. Whoever commits lurking house-trespass by night or bouse-breaking by night in order to the committing of any offence Lurking house-trespass or punishable with imprisonment shall be punished with house-breaking by night to commit offence punishable

imprisonment of either description for a term which may extend to five years, and shall also be liable to

with imprisonment. fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Every person, whether within or without the Presidency-towns, awaren of the commission of, or of the intention of any other person to commit, any offence punishable upder s. 457 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), 8. 44.

In drawing up a charge under s. 457, it is essential to mention the offence which the trespasser intended to commit. -2 W. R., Cr. L., 13, No. 1119 of 1864.

A PRISONER who, in the commission of lurking house-trespass by night, voluntarily attempts to cause !grievous hurt to the owner of the house who tries to capture him, is punishable under s. 460, and not under ss. 457 and 324 of the Penal Code.—Queen v. Lukhun Doss, 2 W. R. 52. [Jackson and Glover, JJ. April 1, 1865.]

HOUSE-BREAKING by night and theft form a single offence, and cannot be punished separately, but under s. 457.—QUEEN v. TONAOKOCH, 2 W. R. 63; 4 R. J. P. J. 563. [Jackson and Glover, JJ. April 19, 1865.]

S. 71 of the Penal Code applies to the case of a person charged with "house bleaking" under s. 457, and "theft" committed under s. 380.—IN THE MATTER OF RAM GOLAM Singh, 6 W. R. 59. [Loch and Jackson, JJ. Aug. 27, 1866.]

In the case of a conviction of attempting to commit house-breaking by night with intent to commit theft, a sentence of whipping was annulled as being illegal.—REG. v. YEL-LA valad PARSHIA, 3 Bom. H. C. R. 37. [Couch, C.J., and Newton, J. Nov. 21, 1866.]

SEPARATE convictions and sentences under ss. 494 and 397, and under ss. 457 and 380 of the Penal Code, were set aside, and the convictions under s. 429 in the former case, and under s. 457 in the latter, allowed to stand. QUEEN v. SAHRAB, 8 W. R. 31. [Jackson and Hobhouse, JJ. July 1, 1867.

WHERE facts prove (1) a house-breaking by night with intent to commit theft, and (2) theft in a building, it is not necessary to divide the charge into two counts. The actual commission of the theft is conclusive evidence of the intent, and it is therefore sufficient to convict for the major offence under s. 457.—Mad. H. C. R., Jan. 20, 1868; 2 Mad. Jur. 72; see too Queen v. Sahrae, 8 W. R. 31, supra.

WHERE a First-class Subordinate Magistrate sentenced a prisoner to six months' rigorous imprisonment under s. 457 of the Penal Code, and, finding that the prisoner was liable to enhanced punishment und :r s. 75 of the Penal Co le, sen enced the prisoner to six months' further imprisonment under s. 46 of the Code of Criminal Procedure (Act

XXV. of 1861), corresponding with s. 35 of the new Code of Criminal Procedure (Act X of 1882), the latter sentence was set aside by the High Court.—PRO., Nov. 2, 1869, 5 Mad. H. C. R., Ap., 3.

HELD that, where, in the course of one and the same transaction, an accused person appears to have committed several acts, directed to one end and object, which together amount to a more serious offence than each of them taken individually by itself would constitute, although for purposes of trial it may be convenient to vary the form of charge, and to designate not only the principal but the subsidiary crimes alleged to have been committed, yet, in the interests of simplicity and convenience, it is best to concentrate the Where, therefore, a person who conviction and sentence on the gravest offence proved. broke into a house by night, and committed theft therein, was charged and tried for offences under ss. 380 and 457 of the Penal Code, and was convicted of both those offences, and punished for each with rigorous imprisonment for 18 months, the Court convicted him of the offence under s. 457, and sentenced him to rigorous imprisonment for three years, and acquitted him of the offence under s. 380.—EMPRESS v. AJUDHIA, I. L. R., 2 All. 644. Straight, J. • Jan. 19, 1880.]

THE accused was convicted at one trial by a Magistrate of the first class of the offeaces of house-breaking by night with intent to commit theft, punishable under s. 457 and of theft in a dwelling-house, punishable under s. 380 of the Penal Code (Act XLV. of 1860), the two offences being part of the same transaction, the theft following the bosse-breaking. The prisoner was sentenced to two years' rigorous imprisonment under s. 457, and to six months' rigorous imprisonment and a fine of Rs. 100, or, in default of payment, three months' further rigorous imprisonment under s. 380. The District Magistrate referred the case to the High Court, on the ground that the aggregate of punishment awarded on the two heads of charge exceeded the powers of the First-class Magistrate who tried the case. The Sessions Judge, to whom an appeal had been preferred, was of the same opinion, and reduced the sentence to two years rigorous imprisonment. Held that, as the accused committed two distinct offences which did not "constitute, when combined, a different offence," punishable under any section of the Penal Code (Act XLV. of 1860), s. 71 of the Code did not apply, and as the aggregate punishment did not exceed twice the amount of partishment which the trying Magistrate was competent to inflict, the sentences were legal under s. 35 of the Criminal Procedure Code (Act X. of 1882). Per Jardine, J.: The rules for assessment of punishment contained in s. 454 of the Criminal Procedure Code of 1872, having been omitted in s. 235 of the Criminal Procedure Code of 1882, must now be sought for in s 71 of the Penal Code (Act XLV. of 1800), and in s. 35 of the Criminal Procedure Code (Act X. of 1882).—QUEEN-EMPRESS v. SAKHARAM BHAU, I. L. R., 10 Bom. 403. [Birdwood and Jardine, JJ. Feb. 1886.]

An accused person was convicted under s. 457 of the Penal Code of house-breaking by night in order to commit an offence (mischief and assault), and also under ss. 426 and 332 for the offences of mischief and assault, and punished separately for each offence. These offences formed parts of one transaction. Held that the sentences were legal.— QUEEN-EMPRESS v. NIRICHAN, I. L. R., 12 Mad. 36. [Kernan and Muttusami Ayyar,]]. April 17, 1888.]

A COURT has no power under s. 395 of the Criminal Procedure Code to revise its sentence of whipping by inflicting a fine. In cases where the sentence of whipping cannot be carried out, all that the Court can do is either to remit the whipping altogether, or to sentence the offender, in lieu of such whipping, or of so much of the sentence of whipping as was not carried out to imprisonment, &c. The word "imprisonment" in s. 395 of the Criminal Procedure Code means a substantive sentence of imprisonment, and not imprisomment for default in payment of a fine.—QUEEN EMPRESS v. SHEODIN, I. L. R., 11 All. 308. [Straight, J. Jan. 5, 1889.]

458. Whoever commits lurking house-trespass by night or house-break- Ct. of Ses.,

Lurking house-trespass or house-breaking by night after preparation made for causing hurt to any person.

ing by night, having made preparation for causing Presy. Mag., hurt to any person, or for assaulting any person, or or Mag. of for wrongfully restraining any person, or for puteing Cognizable. any person in fear of hurt, or of assault, or of wrong- Warrant.

ful restraint, shall be punished with imprisonment of either description for a Not bailable. term which may extend to fourteen years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of or of the intention of any other person to commit, any offence punishable under s. 458 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

▲ DEPUTY MAGISTRATE has no power to convict a theft (s. 380), where the offence charged is lurking house-trespass by night with aggravating circumstances (ss. 458 and 459). but must commit on the latter charge.—PURAN TELEE v. BHUSTOS DOME 9 W. R. 5. [Kemp and Jackson, JJ. Jan. 13, 1869.]

Ct. of Ses. Cognizable. Warrant. lot bailable. comp.

459. Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person, or attempts Grievous hurt caused whilst to cause death or grievous hurt to any person, shall committing lurking housetrespass or house breaking. be punished with transportation for life, or impasonment of either description for a term which may extend to ten years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 450 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

When the door of a shop was found broken open, held that the conviction should have been for house breaking by night, and not simply lurking house-trespass by night.— QUEEN v. KENARAM BOUSER, 4 W. R. 19. [Glover, J. Oct. 25, 1865.]

In a case of conviction of house-breaking by night in order to commit theft under s. 457, and theft under s. 380 of the Penal Code, there may be either one sentence for both offences, or separate sentences for each offence, provided that the total punishment awarded does not exceed that which may be given for the graver offence.—REGOT TU-KAYA BIN TAMANA, I. L. R., 1 Bom. 214. [Westropp, C.J., and Kemball, West, and Nanabhai Haridas, JJ. Sep. 11, 1875.

To support a charge under s. 459 (causing grievous hurt, &c., whilst committing house-breaking) or s. 460 (causing grievous hurt, &c., at the time of committing housebreaking), the grievous hurt must be caused or the attempt must be made during the time that the house breaking is being committed, and not after that offence is completed, and the offender has left the premises.—IMAMUDDIN v. CROWN, Panj. Rec., No. 17 of 1876.

Ss. 459 and 460 of the Penal Code provide for a compound offence, the governing incident of which is that either a "lurking house-trespass" or "house-breaking" must have been completed, in order to make a person who accompanies that offence either by causing grievous hurt or attempt to cause death or grievous hurt responsible under those sections. The sections must be construed strictly, and they are not applicable where the principal act done by the accused person amounts to no more than a mere attermet commit lurking house-trespass or house-breaking.—QUEEN-EMPRESS v. ISMAIL KHAN. 1. L. R., 8 All. 649. [Straight, Offg. C J. Aug. 9, 1886.]

Ditto.

All persons jointly concern-

ed in house-breaking, &c., punishable where death or grievous hurt caused by one

460. If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause. death or grievous hurt to any person, every person jointly concerned in committing such lurking housetrespass by night or house-breaking by night shall be

punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 460, of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

A PERSON who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishCHAP. XVIII.] OFFENCES RELATING TO DOCUMENTS, &c. [Secs. 461-463.

able under s. 460, and not under ss. 457 and 324 of the Penal Code.—QUEEN v. LUKHUN Doss, 2 W. R. 52. [Jackson and Glover, JJ. April 1, 1865.]

THE appellants and another person attempted to break into a house by night for the purpose of committing theft, and were interrupted by the inmates, one of whom was killed by one of the accused. There was no evidence to show which of the accused caused death. Held that the appellants could not be punished with transportation for life under s 460, as the offence of house-breaking had been attempted only, and not committed. Salfudin v. Crown, Pani. Rec., No. 16 of 1874.

To support a charge under s. 459 causing grievous hurt, &c., whilst committing house-breaking or s. 460 (causing grievous hurt, &c., at the time of committing house-breaking), the grievous hurt must be caused or the attempt must be made during the time that the nouse-breaking is being committed, and not after the offence is completed, and the offender has left the premises.—IMAMUDDIN v. CROWN, Panj. Rec., No. 17 of 1876.

QIMINAL COURTS dealing with an approver's evidence in a case where several persons are charged should require corroboration of his statements in respect of the identity of each of the individuals accused. Queen-Empress v. Ram Saran (I. L. R., 8 All. 306), Queen-Empress y. Kure (2 Weekly Notes, 1886, p. 65), and Reg. v. Mullins (3 Cox C. C. 526) referred to. A, B, M, R, and N, were tried together on a charge under s. 460 of the Penal Code. The principal evidence against all of them was that of an approver. Against A, B, and M, there was the further evidence that they produced certain portions of the property stolen on the night of the crime from the house where the crime was committed. With regard to R, it was proved that he was present when B pointed out the place where some of the property was dug up, but he did not appear to have said anything or give any directions about it. Held with reference to A, B, and M, that it could not be said that their recent possession of part of the stolen property, so soon after it had been stolen, was not such corroboration of the approver's evidence of their participation in the crime as entitled the Court to act upon his story in regard to those particular persons. Held that, inasmuch as there was no sufficient material to warrant the inference of guilty knowledge on R's Bart, and with regard to N, no property was found with him or produced through his instrumentality, both R and N ought to have been acquitted.—QUEEN-EMPRESS v. Baldeo, I. L.-R., 8 All. 509. [Straight, Offg. C.J. June 28, 1886.]

461. Whoever dishonestly, or with intent to commit mischief, breaks open or Mag. of 1st Dishonestly breaking open closed receptacle containing property.

or unfastens any closed receptacle, which contains, or and class. or which he believes to contain, property, shall be Cognizable. punished with imprisonment of either description for Warrant. a term which may extend to two years, or with fine, or with both.

According to the definition given in s. 442, a large circular receptacle for grain made of straw, with an opening in the top, and situated in a backyard, is not "a place for the custody of property," and therefore the offence of house-breaking cannot be committed in respect of it; but the offence really committed was the dishonestly breaking open a closed

receptacle containing property.-Mad. H. C. Rul., 1865, on s. 457. 462. Whoever, being entrusted with any closed receptacle which contains, Ct. of Ses., Presy. Mag.

or which he believes to contain, property, without or Mag. of ist Punishment for same ofhaving authority to open the same, dishonestly, or or and class. fence when committed by perwith intent to commit mischief, breaks open or unson entrusted with custody. fastens that receptacle, shall be punished with imprisonment of either descrip- Not bailable.

tion for a term which may extend to three years, or with fine, or with both.

Not comp.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

468. Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any. person, or to support any claim or title, or to cause

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Sec. 463.] OFFENCES RELATING TO DOCUMENTS, &c. [CHAP. XVIII.

any person to part with property, or to enter into any express or implied contract, of with intent to commit traud, or that fraud may be committed, commits forgery.

THE forgery of a copy of a document comes within the definition of forgery as contained in s. 463 of the Penal Code.—Eshan Chunder Dutt v. Pran Nath Chowdhry, W. R., Sp., 71; Marsh. R. 270. [Peacock, C. J., and Bayley and Kemp, JJ. Feb. 9. 1863.]

THE making of a fraudulent document without any criminal intent has been held to be no offence under this Code.—3 W. R., Cr. L., 18, No. 699 of 1865.

THE fraudulent preparation of a deed intending to cause injury to certain parties is not forgery unless such deed is a false document.—5 W. R., Cr. L., 2, No. 150 of 1866.

The signing of a vakalatnama in the name of co-decree-holders without their authority to do so, and delivering it to a vakil, with instructions to file a petition, stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery within the meaning of s. 463 of the Penal Code.—Queen v. Gaynee Rango W. R. 78. [Markby, J. Sep. 27, 1866.]

WHERE a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI. of 1867, filed stamp-paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp-paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect which was antedated, it was held that he was guilty of having abetted the commission of a forgery of a document within s. 463 and s. 446, cl. 1, of the Penal Code.—QUEEN T. SOOKMOY GHOSE, 10 W. R. 23. [Loch and Glover, J]. July 25, 1868.]

The simple making of a false document constitutes the offence of torgery under so 463 of the Penal Code, and it is not necessary that it should be issued or made knows to the injury of a person's reputation either by being presented in Court, or shown to any person. A false document may be made in the name of a fictitious person. Where a drait-petition was prepared with the intention of being used as evidence of a matter, it was held that it fell within the terms of s. 29 of the Penal Code; and, as it contained false statements calculated to injure the reputation of a person, the offence was held to fall within s. 469 of the Penal Code.—Revision of Proceedings in the Case of Sheefalt Ally, 10 W. R. 61; 2 B. L. R., A. Cr., 12. [Loch and Glover, JJ. Dec. 14, 1868.]

A SPECIALLY registered bond was presented before the Small Cause Court Judge for execution under s. 53, A& XX. of 1866; and a decree passed upon it in the usual form. Subsequently the Registrar sanctioned the prosecution of the decree-holder, on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence or making further inquiry, set aside the decree, and sanctioned the prosecution under s. 170 of the Criminal Procedure Code (A& XXV. of 1861), corresponding with s. 195 of the new Code of Criminal Procedure (A& X. of 1882). Held that he was justified in sanctioning the prosecution, but not in setting aside the decree.—Queen v. Nawab Sing, 3 B. L. R., A. Cr., 9. [Norman and Jackson, JJ. April 2, 1869.]

The subsequent falsification of a roznamcha-bahi kept in the office of and poputy Inspector of Schools by the modurrir in charge thereof for the purpose of concealing frauds previously committed, merely with a view to avoid disgrace and punishment, held not to tall within the definition of forgery as given in the Penal Code. Appeal from the order of the Sessions Judge of Goruckpore.—Quekn v. Jogeshur Pershad, 6 N.-W. P. 56. [Pearson, J. Dec. 20, 1873.]

A SIGNED B's name to petitions presented by C to the Mamlatdar requesting his sammary assistance, under Reg. XVII. of 1827, for the recovery of rents from B's tenants. Held that, even if A had no authority from B to sign his name, and if A wished to deceive the Mamlatdar into the belief that it was B himself who disgned the petitions, still, if there had been no intention to defraud anybody, or if no wrongful gain or wrongful loss could have been caused to A or B, A's act did not constitute forgery within the meaning of the Penal Code. Avoidance of litigation is no wrongful loss to Government.—Reg. v. Bravyanishankar, II Bom. H. C. R. 3. [Melvill and Nanabhai Haridas, J]. Feb. 19, 1874.]

CHAP. XVIII.] OFFENCES RELATING TO DOCUMENTS, &c. [SEC. 463.

FALSIFICATION of a record made inforder to conceal a previous act of negligence not, amounting to fraud does not amount to forgery within the meaning of ss. 463 and 464 of the Penal Code.—EMPRESS v. SHANKAR, I. L. R., 4 Bom. 657. [Kemball and Melvill, JJ. July 19, 1880.]

That which constitutes a false document within the meaning of ss. 463 and 464 of the Penal Code is not the writing of any number of words which in themselves are innocent, but the affixing theseal or signature of some other person to the document with a knowledge that the seal or signature is not his, and that he gave no authority to affix it. A person, therefore, who has given orders for the printing of certain receipt-forms similar to those formerly used by a certain company, and corrected the proofs of the same, it being his intention to use the receipt-forms in order to commit a fraud, cannot be convicted of forgery until one of the printed forms has been converted by him into a false document, nor of an attempt to commit forgery until he had done some act towards making one of the forms a false document. Until a form had been converted into a false document, all that was done consisted in mere preparation for the commission of an offence. An attempt to commit an offence must be to do that which, if successful, would amount to the offence. Per Garth, C.].: The fact that the word "make" is used in s. 464 of the Penal Code is conjunction with the words "sign," "seal," or "execute," clearly denotes that the making of a document does not mean writing or printing it, but signing or otherwise executing it.—In the Matter of Riasat Ali, alias Babu Miya, alias Bodiuzzuma, I. L. R., 7 Cal. 352; 8 C. L. R. 572. [Garth, C.]., and Prinsep,]. June 3, 1881.]

On the 2nd August 1884, a Munsif, who was of opinion that, in the course of a suit which had been tried before him, certain persons had committed offences under ss. 193 463, and 471 of the Penal Code, and that the prosecution of these persons was desirable, made an order which he described as passed under s. 643 of the Civil Procedure Code, and in which he directed that the accused should be sent to the Magistrate, and that the Magistrate should inquire into the matter. In May 1885, upon an application by one of the accused to the District Court to "revoke the sanction for prosecution granted by the Munsif," it was contended that the "sanction" had expired on the 2nd February 1885, and had ceased to have effect. Held by the Full Bench that the Munsif's order, whether it was or was not a sanction, was a sufficient "complaint" within the meaning of s. 195 of the Criminal Procedure Code, and that the limitation-period prescribed by that section was applicable to the case. *Per Petheram*, C.J., and Straight, J.: That, considering that s. 643 of the Civil Procedure Code was closely similar to s. 476 of the Criminal Procedure Code, the Munsif's order might be taken as having been passed under the latter section. Also per Petheram, C.J., and Straight, J.: The words in s. 195 of the Criminal Procedure Code, "except with the previous sanction or on the complaint of the public servant concerned," must be read in connection with s. 475, which was enacted with the object of avoiding the inconvenience which might be caused if a Munsif, or a Subordinate Judge, or a Judge were obliged to appear before a Magistrate, and make a complaint on oath, like an ordinary complainant, in order to lay the foundation for a prosecution. The language of 5. 476 indicates that, where a Court is acting under s. 195, a complaint in the strict sense of the Code is not required, and that the procedure therein laid down constitutes the "complaint "mentioned in s. 195 .- ISHRI PROSAD v. SHAM LALL, I. L. R., 7 All. 871. [Petheram, C.J., and Straight, Brodhurst, and Tyrrell, JJ. July 4, 1885.]

Sub-Resistanta states the Registration Act (III. of 1877) is not a Judge, and, therefore, not a "Court" within the meaning of s. 193 of the Code of Criminal Procedure (Act X. of 1882). His sanction is, therefore, not necessary for a prosecution for forgery in respect of a forged document presented for registration in his office. The word "forgery" is used as a general term in s. 463 of the Penal Code; and that section is referred to in a comprehensive sense in s. 195 of the Criminal Procedure Code (Act X. of 1882) so as to embrace all species of forgery, and thus includes a case falling under s. 467 of the Penal Code. The definition of "Court" given in the Evidence Act (I. of 1872) is framed only for the purposes of the Act itself, and should not be extended beyond its legitimate scope. Distinction between a judicial and an atministrative inquiry pointed out.—Queen-Empress v. Tulja, I. L. R., 12 Bom. 36. [West and Birdwood, J]. July 14, 1887.]

PRISONER was requested to make an entry in a book of account belonging to the complainant to the effect that he was indebted to the complainant in a certain sum found due on a settlement of accounts: instead of making this entry as requested, prisoner entered in a language not known to complainant that this sum had been paid to complainant.

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ant. He was convicted of forgery under s. 465 of the Penal Code. Held that the offence was not forgery, but an attempt to cheat.—QUEEN-EMPRESS v. Kunju NAYAR, I. L. R., 12 Mad. A4. [Muttusami Ayyar and Shephard, J]. Sep. 9, 20, 1888.]

A FALSELY represented himself to be B at a university examination, got a hall-ticket under B's name, and headed and signed answer-papers to questions with B's name. Held

that A committed the offences of forgery and cheating by personation.—QUEEN-EMPRESS v. APPASAMI, I. L. R., 12 Mad. 151. [Collins, C.J., and Parkera J. Jan. 18, 1889.]

THE term "claim" in s. 463 of the Penal Code is not limited in its application to a claim to property. The term "property" in the same section will cover a written cartiicate. It is not necessary to construct a forgery under s. 463 of the Penal Code that the property with which it is intended that the false document shall cause a person to part should be in existence at the time when the false document was made. Queen-Empress v. Haradnan (I. L. R., 19 Cal. 380) dissented from. Queen-Empress v. Appasani (I. L. R., 12 Mad. 151) and Queen-Empress v. Ganesh Khanderao and Ganesh Daulat (I Le R., 15 Bom. 506) approved. One S B presented to the Principal of Queen's College, Benares, a false certificate purporting to have been granted by the Principal of Canning College,

Lucknow, to the effect that he had attended a certain proportion of a certain first-year course of law-lectures delivered at Canning College, S B, in fact, never naming attended such lectures. Had that certificate been a true one, it would have entitled S B to attend a further course of law-lectures at any one of several associated institutions amongst which was Queen's College, Benares, without attending or paying the fees for the first course of lectures. On presentation of the above certificate S B obtained permission to attend, and attended, a course of second-year lectures at Queen's College, Benares, without attending or paying the fees required for the first-year course. After S B had attended the above-mentioned second-year course of lectures at Queen's College, Benares, he again presented the said false certificate to the Principal of Queen's College, with a view to his obtaining a consolidated certificate, which was necessary, as he alleged, to enable him do become a

candidate in the Judge's Court pleadership examination in Calcutta. Held that on both occasions, when he presented the false certificate to obtain admission to the second-year law-class at Queen's College, Benares, and again when he endeavoured by its use to obtain the consolidated certificate in order to gain admission to the pleadership examination in Calcutta, S B was guilty of the offence provided for by s. 471 of the Pegal Code.—Queen-Empress v. Soshi Bhushan, I. L. R., 15 All. 210. [Edge, C.], and Aikman, J. April 2 dolument Making a false document. 464. A person is said to make a false document-First.—Who dishonestly or fraudulently makes, signs, seals, or executes a document, or part of a document, or makes any mark denoting the execu-

> it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed; or Secondly.-Who, without lawful authority, dishonestly or fraudulently. by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or .

> tion of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by, or by the authority of, a person by whom or by whose authority he knows that

> Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person, by reason of unsomedness of mind or intoxication, cannot, or that by reason of deception practiced upon him he does not, know the contents of the document or the nature of the alteration.

Illustrations.

(a.) A has a letter of credit upon B for Rupees 10,000 written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000 intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

returns of goods oabmitted by to brepare bills harment to B. 18 submits correct returns at a altered by A. from such altered returns of his

CHAP. XVIII.] OFFENCES RELATING TO DOCUMENTS, &c. [SEC. 464.

(b.) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.

voral (c.) A picks up a cheque on a banker signed by B. payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d.) A leaves with B, his agent, a cheque on a banker signed by A, without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e.) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker, and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f.) Z's will contains these words, "I direct that all my remaining property be equally divided between A, B, and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g.) A endorses a Government promissory note, and makes it payable to Z or his order, by writing on the bill the words, "Pay to Z or his order," and signing the endorsement. B dishonestly erases the words, "Pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h.) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(?.) Z dictales his will to A. A intentionally writes down a different legatee from the legatee named by Z, and, by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(3.) A writes a letter, and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen mis. I fortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(A) A, without B's authority, writes a letter and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an expressed or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

- (a.) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.
- (b.) A writes the word "accepted" on a piece of paper, and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.
- (c.) A picks up a bill of exchange payable to the order of a different person of the same name. A endowes the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable. Here A has committed forgery.
- (d.) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to destand A, and to-cause it to be believed that the lease was granted before the seizure. B though he executes the lease in his own name, commits forgery by antedating it.

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e. (e.) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors, and, in order to give a colour to the transaction, writes a promissory note binding him self to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first bead of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to-forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Rulings.

IT must be proved that the accused practised deception so as to prevent a person from knowing the nature of the document before the accused can be found guilty wader s. 464 of the Penal Code of making a false document.—QUEEN v. NUJEEBUTOOLLAH, 9 W. R. 20. [Jackson, J. Feb. 20, 1868.]

WHERE a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI. of 1867, filed a stamp-paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp-paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect which was antedated, it was held that he was guilty of having abetted the commission of forgery of a document within s. 463 and s. 464, cl. 1, of the Penal Code.—Queen & Sooknow Ghose, 10 W. R. 23. [Loch and Glover, J]. July 25, 1868.]

Where the accused, a monurrir in a registry-office, was charged with making false endorsements of registry on the back of certain deeds, which endorsements were signed by the registrar, it was held that, before he could be convicted of forgery under part 3, s. 464, Penal Code, it must be shown that the registrar, in consequence of deception practised upon him by the accused, did not know the contents of the document he was signing. Money received by a monurrir appointed under the Registration Act (IX. of 1862, B. C.) by way of fees for registering deeds is money entrusted to him as a public servant.

Queen v. Dwarka Nath Ghose, 20 W. R. 49. [Glover and Birch, J]. July 9, 1873.]

WHERE prisoner, to screen his own negligence, altered an office report, such conduct does not fall within the definition of forgery in the Penal Code.—QUEEN v. LALL GUMAL, 2 N.-W. P. 11. [Turner and Spankie, J]. Jan. 18, 1870.]

A MISREPRESENTATION by false description of one's position in life falls under the heading of cheating, and not under that of forgery. Where, therefore, a document purported to have been signed by "G L, patwari," and it was said that it was signed by G L, but at a time when G L was not a patwari, it was held that the document was not a forgery within s. 464 of the Penal Code.—Joy KWRN SINGH v. MAN PATUCK, LI W. R. 41. [Kemp and Ainslie, J]. Feb. 17, 1874.]

FALSIFICATION of a record made in order to conceal a previous act of negligence not amounting to fraud does not amount to forgery within the meaning of ss. 463 and 4649—EMPRESS v. SHANKER, I. L. R., 4 Bom. 657. [Kemball and Melvill, J]. July 19, 1880.]

Where the date of a document, which would otherwise not have been pfesented for registration within time, is altered for the purpose of getting it registered, the offence committed is not forgery, where there is nothing to show that it was done is dishonesly or fraudulently, within cl. 2, s. 464, of the Penal Code, but fabricating false evidence withins. 192.—In re MIR EKRAR ALI: EMPRESS v. MIR EKRAR ALI: L. R., 6 Cal. 402. [Garth, C.]., and Field, J. Dec. 3, 1880.]

THAT which constitutes a false document within the meaning of \$3. 463 and 464 of the Penal Code is not the writing of any number of words which in themselves are innocent, but the affixing the seal or signature of some other person to the document with a knowledge that the seal or signature is not his, and that he gave no authority to affix it. A person, therefore, who has given orders for the printing of certain receipt-forms similar

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to those formerly used by a certain company, and corrected the proofs of the same, if being his intention to use the receipt-forms in order to commit a fraud, cannot be convicted of forgery until one of the printed forms has been converted by him into a false document, nor of an attempt to com nit forgery until he had done some act towards making one of the forms a false document. Until a form had been converted into a false document, all that was done consisted in mere preparation for the commission of an offence. An attempt to commit an offence must be to do that which, if successful, would amount to the offence charged. Per Garth, C.J.: The fact that the word "make" is used in a 464 of the Penal Code in conjunction with the words "sign," "seal," or "execute," clearly denotes that the making of a document does not mean writing or printing it, but signing or otherwise executing it.—In re RIASAT ALI, alias BABU MIYA, alias BODIUZ-ZUMA: EMPRESS v. RIASAT ALI, alias BABU MIYA, alias BODIUZZUMA, d. L. R., 7 Cal. 352; 8 C. L. R. 572. [Garth, C.J., and Prinsep, J. June 3, 1881.]

THE vendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration, they used the deed of sale as evidence in a suit. Held that the alteration of the deed did not amount to "forgery" within the meaning of s. 463 of the Penal Code, nor could the deed, after the alteration, be designated a "forged document" es contemplated by s. 470, the intention to cause wrongful loss or wrongful gain, or to defraud, being wanting; nor could it be said that, in using the deed, the vendees were "dishonestly or "faudulently," using as genuine a "forged document," and therefore the use by the vendees of the deed did not constitute any offence under s. 471 of the Penal Code. Further, that their use of it did not render them liable to conviction under s. 196 of that Code.—EMPRESS v. FATEH, I. L. R., 5 All, 217. [Mahmood, J. Oct. 2, 1882.]

THE accused, in order to obtain a recognition from a Settlement Officer that they were entitled to the title of "Luskur," filed a sanad before that officer purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under ss. 471 and 464 of the Penal Code. Held on appeal that, even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty, as the intention of the accused was not to cause wrongful gain or wrongful loss to any one; their intention being to produce a false belief in the mind of the Settlement Officer that they were entitled to the dignity of "Luskur," and that this could not be said to constitute an "intention to defraud." A sanad conferring a title of dignity on a person is not a valuable security within the meaning of the Penal Code.— AN MAHOMED AND JABAR MAHOMED v. QUEEN-EMPRESS; WARRIS MEAH v. QUEEN-EMPRESS, I. L. R., 10 Cal. 584. [Mitter and Norris, JJ. April 17, 1884.]

A TREASURY-ACCOUNTANT was convicted of offences under ss. 218 and 465 of the Penal Code under the following circumstances: A sum of Rs. 500, which was in the treasury, and was payable to a particular person through a Civil Court, was drawn out and paid away to other persons by means of forged cheques. After the withdrawal of the Rs 500, but before such withdrawal had been discovered, the representative of the payee applied for payment. The prisoner then upon two occasions wrote reports to the effect that the Rs. 500 in question then stood at the payee's credit as a revenue deposit, and that it was about to be transferred to the Civil Court. Upon the first of these reports, an order was signed by the treasury-officer for the transfer of the money to the Civil Court concerned, and to effect such transfer a cheque was prepared by the sale-monurrir, which, as originally drawn up, related to the sum of Rs. 500 already mentioned. The signature of the cheque by the treasury-officer was delayed for some time, and meanwhile the cheque was altered by the prisoner, in such a manner as to make it relate to another deposit of Rs. 500, which had been made subsequently to the above, and to the credit of another person. The result of this was the transfer of the second payee's Rs. 500 to the Civil Court, awif it had been the first Rs. 500, and to the credit of the first payee's repre-The prisoner was convicted under s. 465 of the Penal Code in respect of the cheque, and under s. 218 in respect of the two reports above referred to. Held, with respect to the charge under s. 465, that the prisoner's immediate and more probable intention—which alone, and not his remoter and less probable intention, should be attributed to him-was not to cause wrongful loss to the second payee by delaying payment of the Rs. 500, due to her, though the act might have caused her loss, but to conceal the previous fraudulent withdrawal of the first payee's Rs. 500; that, under these circumstances, he could not be said to have acted "dishonestly" or "fraudulently" within the meaning of s. 24 or s. 25 of the Penal Code; and that, therefore, his guilt under s. 465 had not been

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made out, and the conviction under that section must be set aside. Held also that prisoner's intention in making the false reports was to stave off the discovery of the previous fraud, and save himself or the actual perpetrator of that fraud from legal punishment, and that, having prepared the reports in a manner which he knew to be incorrect, he was rightly convicted under s. 218 of the Penal Code. Held further that as the prisoner, who was a public servant, made these reports, and assumed to make them in due course and as a part of his duty, and held them out as reports which were made by the proper officer, and as no question was put in the examination of the witnesses from the office which suggested that it was not his business to make such reports, it must be inferred that he made them because it was his business to do so, and as a public servant, with the meaning of s. 218 of the Penal Code.—Queen-Empress v. Gridhari Lal, I. L. R., 8 All. 653. [Edge, C.]. Aug. 24, 1886:]

The accused, who was a copyist in the Sub-divisional Office at B, applied for a clerkship then vacant in that office. An efflorsement on his application, recommending him for the post, and purporting to have been made by the Sub-divisional Officer of B, was found to have been falsely made by the accused. The application was accompanied by a letter also fabricated by the accused, purporting to be from the Collector to the Sub-divisional Officer at B, informing the latter officer that he, the Collector, had selected the accused for the vacant post. The Sub-divisional Officer, having some suspicion as to the genuineness of his letter, wrote a demi-official letter to the Collector to ascertain whether he had really written it; and this being posted in the local post office, the accused fabricated a third document, purporting to be a letter from the Sub-divisional Officer to the post-master, asking him to stop the despatch of the demi-official letter. The accused was charged with, and convicted in the Sessions Court of, the offence of forcers under s. 464 of the Penal Code, in respect of the three documents. Held that the conviction was right with regard to the first two documents, but with regard to the third document it could not be said that he falsely made it either dishonestly or fraudulently within the meaning of that section.—Abbul Hamid v. Empress, I. L. R., 13 Cal. 340, [Mitter and Grant,]]. Sep. 7, 1886.]

THE prisoner made certain entries in his ledger, which consisted of rough loose sheets, showing that certain sums of money had been re-paid to the prosecutor, which, in fact, had not been re-paid. Held that the prisoner was guilty of forgery under s. 464. Simply the omission of a count in the charge is a defect in the charge, and the Appellate Court may confirm a conviction under a different section of the Penal Code from that upon which the prisoner was tried and convicted, provided the prisoner has not been prejudiced or injured by the substitution of one section for another.—Anonymous, I Ind. Jur., N. S., 46.

PRISONER was requested to make an entry in a book of account belonging to the complainant to the effect that he was indebted to the complainant in a certain sum found due on a settlement of accounts; instead of making this entry as requested, prisoner entered in a language not known to complainant that this sum had been paid to complainant. He was convicted of forgery under s. 465 of the Penal Code. Held that the advoce was not forgery, but an attempt to cheat.—Queen-Empress v. Kunju Nayar, I. L. R., 12 Mad. 114. [Muttusami Ayyar and Shephard, JJ. Sep. 9, 20, 1888.]

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

No appeal lies from an order of a Civil Court directing a criminal prosecution for forgery committed before it.—Gunga Narain Sircar v. Azerzoonissa Berge, 5 W. R., Mis., 18. [Bayley and Shumbhoonath Pundit, JJ., Feb. 6, 1866.]

When a Civil Court directs that criminal proceedings be taken against a party to a suit before it for perjuty or forgery, the High Court has no power, on an appeal being preferred against the decision of that Court, to direct that such proceedings be stayed until the appeal shall have been heard and determined.—In the Matter of Ram Prasad Hazra, B. L. R., Sup. Vol., 426 (F.B.). [Peacock, C.]., and Bayley, Seton-Karr, Pundit, and Macpherson, JJ. Feb. 12, 1866.]

By a person consenting to act under a mukhtarnama, and attaching his name in token of such consent, he does not become a maker of the mukhtarnama, or a forger, if the mukhtarnama turns out to be forged. It is the duty of the Judge to notice to the

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Ct. of Ses. Uncog. Warrant. Bailable. Not comp. CHAP. XVIII.] OFFENCES RELATING TO DOCUMENTS, &c. [Sec. 465.

assessors discrepancies and contradictory statements made by the witnesses.—QUEEN v
BURJO BARICK, 5 W. R. 70. [Jackson and Glover, JJ. April 16, 1866.]

WHEN a Civil Court sends a prisoner before a Magistrate on a charge of forgery, it is competent to the Magistrate to commit the prisoner for trial on a charge, either of forgery or of using as genuine a false document, or of abetting forgery.—QUEEN v. MOHESH CHUNDER ACHARJEE, 6 W. R. 20. [Norman and Campbell, J]. July 7, 1866.]

THE signing of a vakalatnama in the name of co-decree-holders without their authority to do so, and delivering it to a vakil, with instructions to file a petition, stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery within the meaning of s. 463 of the Penal Code.—Queen v. Gaynee Ram, 6 W. R. 78. [Markby,]. Sep. 27, 1866.]

A PRISONER was charged with having forged pattas A and B, bearing the same date, and adduced in evidence by him in the same suit. No mention of any charge as to patta B was bade in the order of commitment; and the prisoner having been acquitted on an indictment for forging patta A, it was held by the majority of the Court (Markby, J., dissenting) that the plea of autrefois acquit was inadmissible on a subsequent trial of the prisoner for forging the patta B.—Queen v. Dwarkanath Dutt, 7 W. R. 15; 2 Ind. Jur., N. S., 67. [Peacock, C.J., and Kemp and Markby, JJ. Jan. 23, 1867.]

THE sanction for prosecution mentioned in the Criminal Procedure refers to those cases only where a forged document has been put in evidence in a Civil or Criminal Court; but in other cases a Magistrate is competent, proprio motu, to inquire into allegations of forgery, and no sanction is necessary.—Queen v. Ramdharry Singh, 10 W. R. 5. [Loch and Glover, J]. June 6, 1868.]

A CONVICTION for forgery under the Penal Code cannot be had unless it is proved that the accused himself made a document, or part of a document, with the intention of causing it to be believed that such document, or part of a document, was made by the authority of a person by whose authority he knew that it was not made.—Queen v. Ram Gopal Bhur, 10 W. R. 7. [Phear and Hobhouse, J]. June 23, 1868.]

The offence of altering one part of a document executed in two parts for the mutual security of both the parties concerned deserves to be severely punished.—Queen v. Kissoree Mohun Dutt, 17 W. R. 58. [Bayley and Mitter, J]. May 6, 1872.]

Held that, where a person's object was to deceive his employer by falsifying accountbooks which were in his custody, such deception being likely to cause damage to his empleyer, he was rightly convicted under s. 460 of forgery with intent to cheat instead of
under s. 465 of simple forgery.—Queen v. Banessur Biswas, 18 W. R. 46. [Bayley and
Mitter, JJ. Sep. 5, 1872.]

A CIVIL COURT has no power to order the commitment of persons for offences under is. 471, 465 and 193 of the Penal Code without holding the preliminary inquiry required by s. 474 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 478 of the new Code of Criminal Procedure (Act X. of 1882).—QUEEN v. RUNGATOONEE, 22 W. R. 52. [Markby and Mitter, J]. Aug. 5, 1874.]

Where a clerk, who had committed criminal breach of trust, subsequently made false entries in an account-book, with the intention of concealing such offence, held that the making of such entries did not constitute the offence of forgery, and he had therefore been improperly convicted under s. 465 of the Penal Code. Queen v. Jageshur Pershad (6 Nr. W. P. 56) and Queen v. Lal Gumul (2 Nr. W. P. 11) followed.—Empress v. JIWANAND, I. L. R., 5 All. 221. [Mahmood, J. Oct. 5, 1882.]

Let a suit on a bond, instituted in the Court of a Munsif, the question whether the defendant had executed the bond or not was referred to arbitration. The arbitrator decided that the defendant had not executed the bond, and that it was a forgery. The Munsif dismissed the suit in accordance with the award. The defendant then applied to the Munsif for sanction to prosecute the plaintiff without specifying in his application the offences in respect of which he desired to prosecute. The Munsif granted sanction, merely observing that there were sufficient grounds for sanctioning the prosecution, without giving any reasons or specifying the offence or offences in respect of which sanction was granted. Held that the terms in which the Munsif had given his sanction to a prosecution were not sufficiently explicit, and that he should have mentioned the section or sections of the Penal Code under which he authorized criminal proceedings to be taken, as also in a general way the offence or offences to be charged, the date of commission, and the place where

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committed. Further, that, as the Munsif himself had not determined the question of forgery in the suit, he should have made some inquiry to satisfy himself that there were materials to justify a prosecution.—In the Matter of Parsotam Lal v. Bijal, I. L. R., 6 All. 101. [Straight, J. Oct. 23, 1883.]

Sanction was granted to prosecute a defendant for forgery and perjury alleged to have been committed by him in a civil suit which was decided against him on the 22nd August 1882. The defendant then preferred an appeal, which was dismissed on the 9th August 1883. The plaintiff commenced criminal proceedings agains the defendant, under the sanction, on the 23rd July 1884; but, such proceedings having been commenced more than six months after the date of the sanction, the charge was dismissed. The plaintiff then, on the 20th August 1884, applied for a fresh sanction, which was granted on the 13th April 1885. Held that, assuming that the Munsif who granted the fresh sanction had power to do so, as to which the Court expressed no opinion, such fresh sanction should not have been granted unless some explanation was given for the omission to commence proceedings within six months; and as no such explanation was given, or any special grounds shown why a fresh sanction should be given, the Munsif did not exercise a sound discretion in granting such fresh sanction, and consequently his order was set aside.—[OvDEO SINGH E. HARIHAR PERSHAD SINGH I. L. R., 11 Cal. 577. [Mitter and Norris,]]. May 22, 1885.]

A MORTGAGOR was charged with making a fraudulent alteration in his mortgage-deed which was then registered by a Sub-Registrar. Held that the sanction of the Sub-Registrar was not necessary for a prosecution on a charge of forgery. In re Venkatackala (I. L. R., 10 Mad. 154), Queen-Empress v. Subba (I. L. R., 11 Mad. 3) explained.—Queen-Empress v. Sobhanadbi, I. L. R., 12 Mad. 201. [Muttusami Ayyar and Parker, J]. Feb. 11, 1880.]

Under the general revisional powers conferred by s. 439 of the Code of Criminal Procedure, a High Court has power to consider the propriety of an order which ourports to be passed under s. 476 of the Code of Criminal Procedure. Queen-Empress v. Rackappa (I. L. R., 13 Bom. 109) dissented from. Where a defendant in a suit h the Court of a Munsif applied to the District Judge for sanction under s. 195 of the Code to prosecute a witness who had given evidence in the Munsif's Court in support of a deed, produced as evidence before that Court, which had been found by the Munsif to be a forgery, and the District Judge refused the application, but purporting to act under s. 476 of the Code, himself ordered the prosecution of such witness, held that the Judge's order was made without jurisdiction, the offence in respect of which the sanction was directed not having been committed before him, nor brought to his notice in the course of a judicial proceeding.

—IN THE MATTER OF MATHURA DAS, I. L. R., 16 All. 80. [Aikman, J. Nov. 29. 1892.]

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp. Forgery of record of Court ing of or in a Court of Justice, or a register of birth, or of public register. baptism, marriage, or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power-of-attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A CONVICTION may be had for using as genuine a forged document, purporting to be made by a public servant in his official capacity, notwithstanding the illegibility of the seal and signature thereon.—QUEEN v. PROSUNNO BOSE, 5 W. R. 96. [Norman and Campbell,]]. May 28, 1866.]

The subsequent falsification of a roznamcha-bahi kept in the office of a Deputy-Inspector of Schools by the mohurrir in charge thereof for the purpose of concealing frauds, previously committed, merely with a view to avoid disgrace and punishment, was held not to fall within the definition of forgery as given in the Penal Code.—Queen v. JAGESHUR PERSHAD, 6 N.-W. P. 56. [Pearson, J. Dec. 20, 1873.]

S. 35 of the Evidence Act, which provides "that any entry in an official public book, which is duly made by a public servant in the execution of his duty, is of itself a selevant fact," does not make the public book evidence to show that a particular entry has not been made in it. S. 466 of the Penal Code is not intended to apply to cases where a public

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CHAP. XVIII.] OFFENCES RELATING TO DOCUMENTS, &c. [Sec. 467.

officer, or a person acting for a public officer, whose duty it is to make entries ima public book, knowingly makes a false entry, but to cases where a certificate or other document is forged by some unauthorized person with a view to make it appear that it was duly issued by a public officer. The accused, in order to save an estate from forfeiture, made a false entry of rent received in a public book kept by him for the purpose of informing the Collector as to the rents which had been paid into the Collectorate and as to what estates the rents were in arrear, so that he might take steps to enforce payment, and was convicted by the Sessions Judge of an offence under s. 465 of the Penal Code. Held, on appeal, that the accused ought properly to have been convicted under s. 192 of the Code; the provisions of that section not being confined to false evidence to be used in judicial proceedings.—In the Matter of Juggun Lall, 7 C. L. R. 356. [Garth, C.J., and Field,]. Nov. 17, 1880.]

Where a document is made for the purpose of being used to deceive a Court of Justice, it is made with the intention of being used for that purpose. A person, therefore, who, at the request of another sent to trap him, fabricates a document purporting to be a notice under the seal and signature of a Deputy Collector, he being informed that the notice was required by such other person for the purpose of being used in a pending suit (there being, however, in reality, no such suit in existence), is guilty of forgery, it not being necessary that the intention of fraudulently using the document should exist in the mind of any other person than the person fabricating the document.—HARADHAN MAITI TO QUEEN-EMPRESS, I. L. R., 14 Cal. 513. [Petheram, C.J., and Wilson, Tottenham, Norris, and Ghose, JJ. June 4, 1887.]

Forgery of valuable security or a will, or an authority to adopt a son, or which Uncog.
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purports to give authority to the person to make or but cog.
transfer any valuable security, or to receive the principal, interest, or dividends whereon, cs to receive or deliver any money, moveable property, or valuable security is a procurity, or any document purporting to be an acquittance or receipt acknowledge note of Govt.
ing the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation Not bailable.
for life, or with imprisonment of either description for a term which may extend Not comp. to ten years, and shall also be liable to fine.

A FRAUDULENT alteration of a collectorate challan is the forgery of a document described in s. 467 of the Penal Code.—QUEEN v. HURISH CHUNDER BOSE, W. R., Sp., 22. [Loch and Jackson, JJ. April 12, 1864.]

THE forging of a document which purports, on the face of it, to be a copy only, and which, even if a genuine copy, would not authorize the delivery of moveable property, is not sunishable under s. 467 of the Penal Code. The High Court will not alter a conviction by a Sessions Court aided by a jury, on a charge only triable by a jury, to one of a nature not triable by such a tribunal, but will annul the proceedings, and leave the prosecution to take fresh proceedings against the prisoner on any other charge it may be advised.—Reg. v. Naro Gopal, 5 Bom. H. C. R. 56. [Warden and Gibbs, J]. July 22, 1868.]

The prisoner was charged, under s. 471 of the Penal Code, with fraudulently using as genuine a forged document, and, having been tried before a Sessions Judge and jury, was convicted of that offence. The Sessions Judge, considering the forged document to be of the nature of those specified in s. 467, sentenced the prisoner to ten years' transportation. On appeal the High Court held that the charge should have distinctly set forth the offence as that of using a forged document of the nature of those specified in s. 467, and that, that not having been done, the trial by jury was illegal. The conviction and sentence were therefore annulled, and it was directed that the prisoner should be re-tried.—Reg. v. Gangaram Malji, 6 Bom. H. C. R. 43. [Warden and Gibbs, J]. June 24, 1869.]

WHERE prisoner, to screen his own negligence, altered an office-report, such conduct does not fall within the definition of forgery in the Penal Code.—QUEEN v. LALL GUMUL, 2 N.-W. P. 11. [Turner and Spankie, JJ. Jan. 10, 1870.]

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Having in porsersion a will known to be tryes with inlint to use it as the
confiniting or device or mark used for authorities a will

A, ANTENDING to procure a forged document purporting to be executed by one Chotak, applied to K to accompany A to Gorakpur, where A said Chotek would be found, and there to draw out a bond for execution by Chotak. In pursuance of this invitation, K, believing that Chotak would execute the bond, accompanied A to Gorakpur. A took with him his ploughman, named Chetoo, and directed Chetoo to purchase a stamp-paper for the bond, and to give his name and description to the stamp-vendor as Chotak. Chetoo complied with this direction, and the stamp vendor wrote on the stamp-paper an endorsement to the effect that the purchaser was Chotak, with the description which would apply to that person, but, suspecting false personation, arrested Chetgo, and took him to the Magistrate. On the above facts, the Sessions Judge convicted A of attempt to forge a valuable security, and, under ss. 467 and 511, sentenced him to be rigorously imprisoned for five years. Held that, to constitute the offence of attempt under s. 5 m, Penal Code, there must be an act done with the intention of committing an offence, and for the parpose of committing that offence, and it must be done in attempting the commission of the offence. The provisions of s. 511, Penal Code, do not extend to make punishable as attempts acts done in the mere stage of preparation. Although such are doubtless done towards the commission of the offence, they are not done in the attempt to commit the offence within the meaning of the word "attempt" as used in the section .- QUEEN v. RAMSARUN CHAWBEY, 4 N.-W. P. 46. [Turner, J. Mar. 13, 1872.]

The accused, in order to obtain a recognition from a settlement-officer that they were entitled to the title of "luskur," filed a sanad before that officer purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under ss. 471, 464 of the Penal Code. Held on appeal that, even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty, as the intention of the accused was not to cause wrongful gain or wrongful loss to any one; their intention being to produce a false belief in the mind of the settlement-officer that they were entitled to the dignity of "luskur," and that this could not be said to constitute "an intention to defraud." A sanad conferring a title of dignity on a person is not a valuable security within the meaning of the Penal Code.—Jan Mahomed and Labar Mahomed v. Queen-Empress: Waris Meah v. Queen-Empress, I. L. R., 10 Cal. 58.

[Mitter and Norris, JJ. April 17, 1884.]

A SUB-REGISTRAR under the Registration Act (III. of 1877) is not a Judge, and, therefore, not a "Court" within the meaning of s. 105 of the Code of Criminal Procedure (Act X. of 1882). His sanction is therefore not necessary for a prosecution for forgery in respect of a forged document presented for registration in his office. The word forgery" is used as a general term in s. 463 of the Penal Code, and that section is referred to in a comprehensive sense in s. 195 of the Criminal Procedure Code (Act X. of 1882) so as to embrace all species of forgery, and thus includes a case falling under s. 467 of the Penal Code. The definition of "Court" given in the Evidence Act (I. of 1872) is framed only for the purposes of the Act itself, and should not be extended beyond its legitimate scope. Distinction between a judicial and an administrative inquiry pointed out.—Queen-Empress v. Tulja, I. L. R., 12 Bom. 36. [West and Birdwood, JJ. July 14, 1887.]

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp. 468. Whoever commits forgery, intending that the document forged shall

Forgery for the purpose of be used for the purpose of cheating, shall be punished ed with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

HELD that, where a person's object was to deceive his employer by falsifying accounte books which were in his custody, such deception being likely to cause damage to his employer, he was rightly convicted under s. 468 of forgery with intent to cheate instead of under s. 465 of simple forgery.—QUEEN v. BANNESSUR BISWAS, 18 W. R. 46. [Bayley and Mitter, J]. Sep. 5, 1872.]

The accused was charged with cheating by falsely and incorrectly reading out to an octroi darogha the contents of an invoice of a consignment of goods, and so making the value appear to be less than it actually was; and also with forgery under s. 468, in having afterwards altered the invoice so as to make it correspond with what he had dictated the darogha. Held that, the alteration in the invoice having been made after the offence of cheating was complete, and being made by the accused for the purpose of saving himself or concealing the offence of cheating, a charge under s. 468 was not sustainable.—HURMUKH RAI v. CROWN, Panj. Rec., No. 15 of 1876.

map. XVIII.] OFFENCES RELATING TO DOCUMENTS, &c. [Secs. 469-471.

THE granting of a sanction to a private person under cl. (c) of s. 195 of the Code of minal Procedure (Act Xi. Mr 1832) does not debar a Civil Court from proceeding under 1478; nor can the dismissal by a Magistrate of a complaint made by a private person be d to be a bar, till set aside, to a proceeding under that section. —QUERN-EMPRESS v. [Birdwood and Jardine,]]. Dec. 13, 1888.]

469. Whoever commits forgery intending that the document forged shall Ct. of Ses. harm the reputation of any party, or knowing that Warrant, Pargery for the purpose of harm the reputation of any party, or knowing that Warrant, it is likely to be used for that purpose, shall be purpose. Bailable. ished with imprisonment of either description for a Not comp. rm which may extend to three years, and shall also be liable to fine.

WHERE a draft-petition was prepared with the intention of being used as evidence of matter it was held to fall within s. 20 of the Penal Code; and, as it contained false stateents calculated to injure the reputation of a person, the offence was held to fall within 469 of the Penal Code.—Revision of Proceedings in the Case of Sheefait Ally, W. R. 61; 2 B. L. R., A. Cr., 12. [Loch and Glover, J]. Dec. 14, 1868.]

" A forged document."

470. A false document made wholly or in part by forgery is designated "a forged document."

THE vendees of a plot of land altered the number by which the land was described in edeed of sale, doing so because such number was not the right number. Having made his alteration, they used the deed of sale as evidence in a suit. Held that the alteration of the deed did not amount to "forgery" within the meaning of s. 463 of the Penal Code, • or could the deed, after the alteration, be designated a "forged document" as contemlated by \$. 470, the intention to cause wrongful loss or wrongful gain or to defraud beg wanting; nor could it be said that, in using the deed, the vendees were "dishonestly" " fracquiently" using as genuine a " forged document," and therefore the use by the endees of the deed did not constitute an offence unders. 471 of the Penal Code. Further, at their use of it did not render them liable to conviction under s. 196 of that Code.-EMPRESS v. FATEH, I. L. R., 5 All. 217. [Mahmood, J. Oct. 2, 1882.]

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471. Whoever fraudulently or dishonestly uses as genuine any docu-Ct. of Ses. ment which he knows or has reason to believe to be Uncog. *Using as genuine a forged a forged document shall be punished* in the same Warrant. document. manner as if he had forged such document.

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WHERE a forged document is put in evidence before the Collector, the power of commitment rests with the Revenue Authorities, and does not, under any circumstances, ex- forged documitmeht rests with the Kevenue Authorities, and Social Jur., O. S., 11. [Steer, ment is a protein the Magistrate.—Govt. v. Hungsessur Sein, 1 Ind. Jur., O. S., 11. [Steer, ment is a protein of the

able.

COUNTERFEIT seals and forged documents were found in the prisoner's possession, the offence is and, as he could give no satisfactory information as to how he became possessed of them, cognizable it was inferred that he kept them with the intention of using them fraudulently. QUEEN and non-bailv. Kristo Soonder Drb, 2 W. R. 5. [Kemp and Glover, J]. Jan. 10, 1865.]

THE offence of uttering forged documents requires in this country to be punished Sanction. with the severest punishment allowed by law. Contemporaneous sentences are not justified by the Penal Code.—QUEEN v. MOHESH CHUNDER SIRCAR, 3 W. R. 13. [Glover, J. May 15, 1865.]

A CONVICTION may be had for using as genuine a forged document purporting to have been made by a public servant in his official capacity, notwithstanding the illegibility of the seal and signature thereon.—QUEEN v. PROSSUNO BOSE, 5 W. R. 96. [Norman and Campbell, JJ. May 28, 1866.

A PERSON may be convicted of using as genuine a document which he knew to be lorged, though he in the first instance produced only a copy of a copy of it.—QUBEN v. Nujum Ali, 6 W. R. 41. [Jackson and Markby, J. July 9, 1866.]

WHERE a prisoner produced as evidence an account-book, one page of which had been fraadulently abstracted, and another substituted for it, held that he was not guilty of the

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offence of attempting to use as genuine fabricated evidence, unless he knew of the forgery, and intended to use the forged evidence for the purpose of affecting the decision on the point at issue when the book was tendered.—QUERN v. MUDDOO SOODUN SHAW, 7 W. R. 23. [Kemp and Markby,]]. Jan. 26, 1867.]

Where an intention to use a forged document, if necessar, inferred from the facts of the case and from the conduct of the prisoner.—Queen v. Hatim Moonshee alias Mahoned Hatim, 8 W. R. 11. [Seton-Karr and Macpherson, JJ. eJune 8, 1867.]

THERE must be a fraudulent and dishonest using of a document as genuine before a conviction can be had under s. 471 of the Penal Code.—Queen v. Jahan Buz, 8 W. R. 81. [Kemp and Glover, JJ. Nov. 19, 1867.]

In a case in which the accused was charged with dishonestly using as genuine a patta which he knew to be forged, and in which there was a fraudulent insertion, it was held that it was not necessary to prove that he personally inserted the word, but it was sufficient if it was inserted with his knowledge.—QUEBNA HEMORUDDI MUNDUL, 9 W.R. 22. [Kemp and Jackson,]]. Mar. 2, 1868.]

A DEED of divorce is a "valuable security" within the meaning of s. 30 of the Penal Code. The presenting of a forged document of such a nature for registration and obtaining registration, would be "using" within s. 471 of that Code.—QUEEN v. AZIMOODDEEN, 11 W. R. 15. [Jackson and Glover, JJ. Mar. 3, 1869.]

THE false alteration of a police-diary by a head-constable was held to fall under s. 471, Penal Code, as the forgery of a document made by a public servant in his official capacity.—QUEEN v. RUGHOO BARRICK, 11 W. R. 44. [Norman and Jackson, JJ. May 3, 1860.]

The prisoner was charged, under s. 471 of the Penal Code, with fraudulently using as genuine a forged document, and, having been tried before a Sessions Judge and jury, was convicted of that offence. The Sessions Judge, considering the forged document to be of the nature of those specified in s. 467, sentenced the prisoner to 10 years transportation. On appeal, the High Court held that the charge should have distinctly set forth the offence as that of using a forged document of the nature of those specified in s. 467, and that, that not having been done, the trial by jury was illegal. The conviction and sentence were therefore annulled; and it was directed that the prisoner should be re-tried.—Reg. v. Gangaram Malji, 6 Bom. H. C. R. 43. [Warden and Gibbs, J]. June 24, 1869.]

To support a conviction of the offence under s. 471 of the Penal Code, there must be a using of a document by a person who knows, or has reason to believe, that it is forged.

—QUBEN T. BHOLAY PRAMANICK, 17 W. R. 32. [Kemp and Jackson, J]. Feb. 20, 1872.]

The offence imputed against an accused, who, in a civil suit, is alleged to have used as genuine a document which he knew to be a forged document, is one cognizable under s. 471 of the Penal Code. Such accused should, therefore, be charged under that section, and not under s. 196 of the Code.—Empress v. Kherode Chunder Mozumdar, I. L. R., 5 Cal. 717; 6 C. L. R. 118. [Jackson and Tottenham, J]. Mar. 2, 1880.]

Where the accused were charged under s. 471 of the Penal Code with having, is a suit brought against them by the vendee of their sister to recover possession of certain property acquired by her by right of inheritance from her father, fraudulently and dishonestly used a forged document as genuine, knowing or having reason to believe it to be a forged document, it appeared that the accused were in possession of the property, and that the document in question purported to be a deed of gift from their father. It was proved that the endorsement of registration which appeared in the document was an iorgery. In his charge to the jury the Sessions Judge omitted to deal with the fact of the accused being in possession of the property. He also directed that, the registration endorsement having been proved to be a forgery, it was for the accused persons to establish the genuineness of the document. Held that it was not sufficient for the jury merely to decide on the evidence whether the document was a forgery, and whether the accused knew it was a forgery when they used it, but it was further necessary for the jury to decide whether the document had been used fraudulently and dishonestly. Held also that the Sessions Judge, in omitting to deal with the fact of the possession of the accused. and in throwing the onus of proving the genuineness of the document upon them, had misdirected the jury.—Khorshed Kazi v. Empress, 8 C. L. R. 542. [Mitter and Maclean, JJ. May 30, 1881.]

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Where a person, in the course of an action brought against him to gain possession of a property, uses a lorged document for the purpose of supporting his title, though there may be no necessity for the use of it, such a user is clearly fraudulent. A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, would, if proved, be sufficient to support a conviction; and such an intention is a necessary inference which the jury should be directed to draw, if they are satisfied that the accused has uttered a forged document as a true one, meaning it to be taken as such, and knowing it to be forged.—In the Matter of Dhunam Kazer, I. L. R., 9 Cal. 53; II C. L. R. 69. [Maclean and Norris, J]. July 13, 1882.]

The rendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration, they used the deed of sale as evidence in a suit. Held that the alteration of the deed and not amount to "forgery" within the meaning of s. 463 of the Penal Code, nor could the deed, after the alteration, be designated a "forged document" as contemplated by s. 470, the intention to cause wrongful loss or wrongful gain, or to defraud, being wanting; nor could it be said that, in using the deed, the vendees were "d shonestly" or "fraudulently" using as genuine a "forged document," and therefore the use by the vendees of the deed did not constitute an offence under s. 471 of the Penal Code. Further that their use of it did not render them liable to conviction under s. 106 of that Code.—
Empress v. Fateh, I. L. R., 5 All. 217. [Mahmood, J. Oct. 2, 1882.]

THE Court of an Assistant Collector is not subordinate to that of the Magistrate of the District within the meaning of s. 195 of the Criminal Procedure Code. Sanction to prosecution granted under s. 195 should specify the Court or other place in which, and the occasion on which, the offence was committed, and such sanction should not be granted without a preliminary inquiry, where such inquiry is "necessary" within the meaning of s. 476 of the Code. Where sanction to the prosecution of a person for the offence of using certain evidence known to be false was granted by a Court to which the Court in which such evidence was used, was not subordinate, and such sanction did not specify the place in which, and the occasion on which, such offence was committed, and the Court granting the sanction did not make any preliminary inquiry, although such an inquiry was "necessary" in the sense of s. 476 of the Criminal Procedure Code, held that, the indispensable preliminary conditions of s. 195 of the Code being wanting to the prosecution, the committing Magistrate was incompetent to entertain the case, and the commitment was illegal, and should be quashed. Held also that the fact that there was not any evidence to connect such person with the use of such false evidence was a defect in law sufficient to justify the quashing of the commitment.—EMPRESS v. NOROTAM DAS, I. L. R., 6 All. 98. Oct. 2, 1883.] Tyrrell, J.

The accused, in order to obtain a recognition from a settlement-officer that they were entitled to the title of "luskur," filed a sanad before the officer purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under ss. 471 and 464 of the Penal Code. Held on appeal that, even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty, as the intention of the accused was not to cause wrongful gain or wrongful loss to any one-their intention being to produce a false belief in the mind of the settlement-officer that they were entitled to the dignity of "luskur," and that this could not be said to constitute an "intention to defraud." A sanad conferring a title of dignity on a person is not a valuable security within the meaning of the Penal Code.—Jan Mahomed and Jara Mahomed v. Queen-Empress; Warris Meah v. Queen-Empress, I. L. R., 10 Cal. 584. [Mitter and Norris, J]. April 17, 1884.]

The creditors of a police-constable applied to the District Superintendent of Police that Rs. 2 might be deducted monthly from the debtor's pay until the debt was satisfied. Upon an order being passed directing that the deduction asked for should be made, the debtor produced a receipt purporting to be a receipt for Rs. 18, the whole amount due. It subsequently appeared that the receipt was one for Rs. 8, which the debtor had altered by adding the figure "1," so as to make it appear that the receipt was for Rs. 18. Held that the real intent in the prisoner's mind being to induce his superior officer to refroin from the illegal act of stopping a portion of his salary, the Court in a criminal case ought not to speculate as to some other intent over and above this that might have presented itself to him; that it did not necessarily follow that he contemplated setting up the altered receipt to defeat his creditor's claim; and that therefore he ought not to have been con-

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SEC. 471.] OFFENCES RELATING TO DOCUMENTS, &c. [CHAP. XVIII

wicted of an offence under s. 471 of the Penal Code.—QUEEN-EMPRESS v. SYED HUSSAIN, I. L. R., Z. All. 403. [Petheram, C. J., and Straight, J. Feb. 27, 1888]

In a trial upon a charge, under s. 471 of the Penal Code, of fraudulently or dishonestly using as genuine documents known to be forged, it was found that four forged receipts for the payment of rent, used by the prisoner, had been fabricated in lieu of genuine receipts which had been lost. Held that, with reference to the definitions of the terms "dishonestly" and "fraudulently" in ss. 24 and 25 of the Penal Code, the prisoner, upon the facts as found, had not committed the offence punishable under s. 471.—Queen-Empress v. Sheo Dayal, I. L. R., 7 All. 459. [Brodhurst, J. Mar. 6, 1885]

On the 2nd August 1884, a Munsif, who was of opinion that, in the course of a suit which had been tried before him, certain persons had committed offences under ss. 193. 463, and 471 of the Penal Code, and that the prosecution of these persons was desirable, made an order which he described as passed under s. 643 of the Civil Procedure Code, and in which he directed that the accused should be sent to the Magistrate, and that the Magistrate should inquire into the matter. In May 1885, upon an application bysone of the accused to the District Court to "revoke the sanction for projecution granted by the Munsif," it was contended that the "sanction" had expired on the 2nd February 1885, and had ceased to have effect. Held by the Full Bench that the Munsif's order, whether it was or was not a sanction, was a sufficient "complaint" within the meaning of s. 195 of the Criminal Procedure Code, and that the limitation-period prescribed by that section was applicable to the case. *Per Petheram*, C.J., and Straight, J.—That, considering that s. 643 of the Civil Procedure Code was closely similar to s. 476 of the Criminal Procedure Code, the Munsif's order might be taken as having been passed under the latter section. Also per Petheram, C.J., and Straight, J .- The words in s. 196 of the Criminal Procedure Code, "except with the previous sanction or on the complaint of the public servant concerned," must be read in connection with s. 476 which was enacted with the object of avoiding the inconvenience which might be caused if a Munsif or a Subordinate Judge, or a Judge, were obliged to appear before a Magistrate, and make a complaint on oath, like an ordinary complainant, in order to lay the foundation for a prosecution. The lasguage of s. 476 indicates that, where a Court is acting under s. 195, a complaint in the strict sense of the Code is not required, and that the procedure therein laid down constitutes the "complaint" mentioned in s. 195 .- ISHRI PROSAD v. SHAM LALTE I. L. R., 7 All. [Petheram, C.J., and Straight, Brodhurst, and Tyrrell, JJ. July 4, 1885.]

Rules of limitation are foreign to the administration of criminal justice, and it is only by express statutory provision that any rule of limitation could be made applicable to criminal cases. Art. 178, Sch. II., Limitation Act (XV. of 1877), must be construed with reference to the wording of the other articles, and can relate only to applications ejasdem generis. A suit was instituted for possession of certain land on which stood a factory. In proof of the claim, the plaintiffs filed in Court a sarkhat or lease, which was pronounced by the Munsif to be a forgery. Plaintiffs appealed up to the High Court, where, on the 24th June 1886, the Munsif's decree was affirmed. Defendants then applied to the Munsif for sanction to prosecute the plaintiffs for the offence of using a forged document, knowing the same to be forged. The Munsif refused to sanction the prosecution prayed for; but on application to the Sessions Judge, such sanction was granted. On application to revise the Sessions Judge's order granting sanction, it was contended that, after the layer of nearly three years, sanction to prosecute should not have been granted. Held that there is no fixed period of limitation for making applications for sanction under s. 1050 the Criminal Procedure Code.— Queen v. Ajudhia Singh, I. L. R., 10 All. 350. [Mahmood, J. Jan. 25, 1888.]

A ROST-MASTER misappropriated a certain sum of money, and at the same time made a false document purporting to be a receipt signed by the person to whom the money was payable. He was convicted of using a forged document under s. 471 of the Penal Code. It was contended that no forgery had been committed, because the receipt was made merely to cover the embezzlement. Empress of India v. Yimanand (I. L. R., 5 Mimself from liability to pay the debt, cannot be said not to be guilty of forgery, hecause he intended by the fabrication to cover a dishonest purpose.—Queen Empress v. Sara-Pati, I. L. R., 11 Mad. 411. [Muttusami Ayyar and Wilkinson, J]. July 5, 1883.]

THE granting of a sanction to a private person under cl. (c) of s. 195 of the Code of Criminal Procedure (Act X. of 1882) does not debar a Civil Court from proceeding under s. 478; nor can the dismissal by a Magistrate of a complaint made by a private person

be held to be a bar, till set aside, to a proceeding under that section.—QUEEN-EMPRESS E. SHANKAR, I. L. 18, 13 Bom. 384. [Birdwood and Jardine, JJ. Dec. 13, 1888.]

CRETAIN documents having been put into Court in a suit pending before a District Mussif, but not given in evidence, the District Mussif made an order for the prosecution of the parties who so put them in, on the ground that the documents were forgeries. Held (1) that the High Court had power to revise the proceedings of the District Mussif; (2) that the District Mussif was not competent to go beyond the record; (3) that the order was wrong and should be set aside.—Abdul Khadar v. Meera Saheb, I. L. R., Mad. 224. [Parker and Shephard, J]. Jan. 5, 15, 1892.]

In construing ss. 24 and 25 of the Penal Code, the primary and not the more remote intention of the accused must be looked at. Queen-Empress v. Girdhari Lal (I. L. R., 8 All. 653) cited. Under the rules of the Calcutta University a private student desiring to appear at the Entrance Examination is required to forward to the Burian desiring to appear at the Entrance Examination is required to forward to the Registrar, with his application for permission to appear, a certificate to the effect, inter alia, that he is of good-moral character, and has submitted himself to a test examination by, and furnished excress to the person signing the certificate sufficient in that person's opinion to show that his qualifications give a reasonable probability of his passing the examination. Such certilicate has to be signed by one or other of the persons mentioned in the rules, amongst them being the head-master of a high school under public management. certificate being sent to the Registrar and the prescribed fee paid, that officer forwards a receipt to the candidate with his roll-number thereon, which is also an authority for him to appear at the examination, and enter the examination-hall. A private student forwarded to the Registrar, with his application for permission to appear, a certificate in the prescribed form, purporting to be signed by the head-master of a high school, such signature however, being, as the applicant well knew, a forgery. The Registrar, knowing at the time that the signature of the head-master was not genuine, sent to the applicant the receipt for his fee and the necessary authority allowing him to appear at the examination, and in due course the applicant appeared, took his seat in the hall at the desk allotted to him, and confinenced the examination. Upon charges being preferred against the applicant of using as genuine a forged document (s. 471), and attempting to cheat (ss. 415 and 511): held that, his primary object or intention was, by falsely inducing the Registrar to believe that the certificate was signed by the head-master of a Government school under public management, to be permitted to sit for the Entrance Examination, and that such intention could not be held to be "fraudulent" or "dishonest" within the meaning of ss. 25 and 24 of the Penal Code. Held consequently, that the use of the forged document, though with the knowledge or belief that it was forged, was not fraudulent or dishonest, and that as these are essential elements to offences under ss. 471 and 415 of the Penal Code, the accused had not committed either of the offences charged. Held further that the accused had not committed any offence under the Penal Code. San Mahomed v. Queen-Empress (I. L. R., 10 Cal. 504) cited. In a reference by a Presidency Magistrate to the High Court, under s. 432 of the Code of Criminal Procedure, as to whether, on the facts stated, any offence has been committed by an accused person, it lies on the prosecution to make out that an offence has been committed, and under the circumstances the prosecution must begin.—Queen-Empress v. Haradhan alias Rakhal Dass GHOSH, I. R., 19 Cal. 380. [Norris and Beverley,]]. April 20, 1892.]

THE term "claim" in s. 463 of the Penal Code is not limited in its application to a claim to property. The term "property" in the same section will cover a written certificate. It is not necessary to constitute a forgery under s. 463 of the Penal Code that the property with which it is intended that the false document shall cause a person to part should be in existence at the time when the false document was made. Queen-Empress v. Haradhan (I. L. R., 19 Cal. 380) dissented from. Queen-Empress v. Appasami (I. L. R., 12 Mad. 151) and Queen-Empress v. Ganesh Khanderao and Ganesh Daulat (I. L. R., 15 Bom. 506) approved. One S B presented to the Principal of Queen's College, Benares, a false certificate purporting to have been granted by the Principal of Canning College, Lucknow, to the effect that he had attended a certain proportion of a certain first-year course of law-lectures delivered at Canning College, S B, in fact, never having attended such lectures. Had that certificate been a true one, it would have entitled S B to attend a further course of law-lectures at any one of several associated institutions amongst which was Queen's College, Benares, without attending or paying the fees for the first course of lectures. On presentation of the above certificate S B obtained permission to attend and attended, a course of second-year lectures at Queen's College, Benares, without attend-

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ing or paying the fees required for the first-year course. After S B had attended the above-mentioned second-year course of lectures at Queen's College, Benares, he again presented the said false certificate to the Principal of Queen's College with a view to his obtaining a consolidated certificate, which was necessary, as he alleged to enable him to become a candidate in the Judge's Court pleadership examination in Calcutta. Held that on both occasions, when he presented the false certificate to obtain admission to the second-year law-class at Queen's College, Benares, and again when he endeavoured by its use to obtain the consolidated certificate in order to gain admission to the pleadership examination in Calcutta, S. B. was guilty of the offence provided for by 3, 471 of the foode,—Quben-Empress v. Soshi Bhushan, I. L. R., 15 All. 210. [Edge, C.]., and the man, J. April 29, 1893.]

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.

Making or possessing counterfeit seal, &c., with intent

to commit a forgery punish-

472. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the mate, shall be used for the purpose of committing any forgery which would be punishable under section 467. or with such intent has in his possession any such seal,

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able under section 467. plate, or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

Making or possessing coun-terfeit seal, &c., with intent to commit forgery punishable

478. Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or with such intest

otherwise. has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COUNTERFEIT seals and forged documents were found in the Prisoner's possession: and, as he could give no satisfactory information as to how he became possessed of them. it was inferred that he kept them with the intention of using them fraudulently.v. Kristo Soonder Deb, 2 W. R. 5. [Kemp and Glover, J]. Jan. 10, 1865.]

A PERSON who uses in Court false documents as true, besides swearing to their authenticity, may be convicted under s. 196 of the Penal Code only, and not under s. 471 also.—Queen v. Oodun Lall, 3 W. R. 17. [Glover, J. May 23, 1865.]

WHERE several seals of different descriptions were found in the possession of the accused with intent to commit forgery, it was held that, under s. 473 of the Penal Code, there was a complete and separate offence committed in respect of every seal found, and that the prisoners could be legally convicted of a separate offence in regard to each seal, unless it appeared that several such seals were in their possession for the purpose of committing one particular forgery.—Queen v. Goluck Chunder, 13 W. R. 16. Jackson and Mark. by, JJ. Jan. 18, 1870.]

Ditto.

Having possession of valuable security or will known to be forged with intent to

use it as genuine.

474. Whoever has in his possession any document knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466, be punished with imprisonment of either de-

scription for a term which may extend to seven years, and shall also be Hable to fine; and, if the document is one of the description mentioned in section 467. shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

It is not sufficient for a conviction, under s. 474 of the Penal-Code, to say that the prisoner might possibly have used an altered document. The guilty intent ment be aboable Leev

[Sec. 475.

proved. not interred.—Queen v. Lokenath Saha, W. R, Sp., 12. [Steer and Seton-Lar,]]. Feb. 22, 1864.]

OFFENCES AS TO DOCUMENTS, &c.

To support a charge under s. 474 of the Penal Code, it is necessary for the prosecution to prove (1) that the documents in respect of which the charge is brought are forged; (2) that the accused knew them to be forged; (3) that he was in possession of them; (4) that he intended that they should be fraudulently or dishonestly used as genuine; and (5) that each of the documents is of the description mentioned in s. 460 or 2. 407 of the Penal Code. To support a charge under the latter part of s. 475 of the Penal Code, it is necessary for the prosecution to prove (1) that the accused was in possessions of the papers referred to in the charge; (2) that the devices or marks were counterfeited on them; (3) that the marks were such as are used for the purpose of authenticating any document described in s. 467; and (4) that the accused intended that the marks arould be used for the purpose of giving the appearance of authenticity to documents either then forged or thereafter to be forged. The accused was charged with being if possession of forged documents, an offence punishable under ss. 474 and 475 of the Penal Cede. In his summing up, the Sessions Judge, after stating that the documents were admitted by the defence to be forgeries, told the jury that the only issue they had to decide was whether the forged documents were in the possession of the accused, and whether the nature of one, at all events, of the documents was such as to connect them with the accused, being the kind of document he would be likely to have in his house, and he alone, and that if they found this issue in the affirmative, they must return a verdict of guilty. Held that the charge to the jury was defective and misleading, and insufficiently complied with the requirements of s. 297 of the Code of Criminal Procedure (Act X. of 1882).—QUEEN-EMPRESS v. ABAJI RAMCHANDRA, I. L. R., 16 Bom. 165. [Birdwood and Parsons, J]. Feb. 18, 1891.]

475. Whoever counterfeits upon or in the substance of any material any Crt of Ses.

Counterfeiting a device or mark uses for authenticating documents described in section 467, or possessing counterfeit marked material.

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device or mark used for the purpose of authenticat- Uncog. ing any document described in section 467, intending Not bailable. that such device or mark shall be used for the purpose Not comp. of giving the appearance of authenticity to any docu- Sanction. ment then forged or thereafter to be forged on such

material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable

In order to a conviction under s. 475 of the Penal Code, the document which the accused has in his possession must have some counterfeit device or mark upon it; and it must be proved that the accused has the document in his possession with the intent to using such device or mark for the purpose of giving the appearance of authenticity to the document. The ocument must be of the nature mentioned in s. 467 of the Penal Code.-QUEEN v. RUGHOONUNDUN PATTRONUVEES, 15 W. R. 19. [Kemp and Glover, J]. Feb. 18, 1871.]

To support a charge under s. 474 of the Penal Code, it is necessary for the prosecution toprove (1) that the documents in respect of which the charge is brought are forged; (2) that the accused knew them to be forged; (3) that he was in possession of them; (4) that he intended that they should be fraudulently or dishonestly used as genuine; and (5) that each of the documents is of the description mentioned in s. 466 or s. 467 of the Penal Code. To support a charge under the latter part of s. 475 of the Penal Code, it is necessary for the prosecution to prove (1) that the accused was in possession of the papers referred to in the charge; (2) that the devices or marks were counterfeited on them; (3) that the marks were such as are used for the purpose of authenticating any document described in s. 467; and (4) that the accused intended that the marks should be used for the purpose of giving the appearance of authenticity to documents either then forged or thereafter to be forged. The accused was charged with being in possession of forged documents, an offence punishable under ss. 474 and 475 of the Penal Code. In his summing up, the Sessions Judge, after stating that the documents were admitted by the defence to be forgeries, told the jury that the only issue they had to decide was whether the forged

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documents were in the possession of the accused, and whether the gature of one, at all events, of the documents was such as to connect them with the accused, being the kind of documents he would be likely to have in his house, and he alone, and that if they found this issue in the affirmative, they must return a verdict of guilty. Held that the charge to the jury was defective and misleading, and insufficiently complied with the requirements of s. 297 of the Code of Criminal Procedure (X. of 1882)—Quern-Empress v. Abaji Ramchandra, I. L. R., 16 Bom. 165. [Birdwood and Passons, J]. Feb. 18, 1891.]

DURING the course of a police-investigation into a complaint of theft, the house of the accused was searched, and a bundle of papers, about 58 in number, were found, which were alleged to be forgeries, or preparations for forgeries. The accused was thereupon committed to the Court of Session on a charge under \$ 475 of the Penal Code. A few days before the trial of the accused, the police searched the house of one Shivlingapa, who was a witness for the defence, and there discovered a batch of suspicious papers, which were produced at the trial, and put in as evidence against the accused. The accused the cosvicted of the offence under s. 475 of the Penal Code, and sentenced to transportation for life. Held, reversing the conviction and sentence, that the suspit ious pepers found in Shivlingapa's house were not admissible in evidence against the accused. Held, further, that the Judge's direction to the jury regarding those papers—that they established a connection between the accused and many of the witnesses belonging to the same faction, and that they showed the extent to which the practice of forgery had gone in the village, and that in this way they were relevant to the question of guilty knowledge and intention—was a misdirection which prejudiced the accused. In the trial of an accused person on a charge under s. 475 of the Penal Code, the charge should be so framed as to specify distinctly that part of the section which is applicable to the case, and should distinctly specify the particular papers bearing a counterfeit mark or device which the accused was alleged to have had in his possession with the intent mentioned in the section.—QUEEN-EMPRESS v. ABAJI RAMCHANDRA, l. L. R., 15 Bom. 180. Birdwood and Parsons, [] Sep. 3, 1890.]

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp. Sanction.

476. Whoever counterfeits upon or in the substance of any material Counterfeiting a device or mark used for authenticating documents other than those described in section 467, er possessing counterfeit marked material.

any device or mark used for the purpose of authenticating any document other than the documents described in section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then

forged or thereafter to be torged on such material, or who, with such intent. has in his possession any material upon, or in the substance of, which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Litto.

477. Whoever fraudulently or dishonestly, or with intent to cause damage fraudulent cancellation, de-struction, &c., of a will. or injury to the public or to any person, cancels, destruction, &c., of a will. or defaces, or attempts to secrete, any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

5.425

TIE tearing up of a patta is the destruction of a valuable security within the meaning of s. 477, Penal Code.—QUEEN v. NITAR MUNDLE, 3 W. R. 38. [Steer, J. July 4, 1865]

THE fact that a document has not been stamped, and is not, therefore, receivable in evidence, does not prevent its being a "valuable security" within the meaning of s. 477 of the Penal Code.—Pro., Aug. 5, 1873, 7 Mad. H. C. R., Ap, 26.

P M was convicted by a Magistrate under s. 426 of the Penal Code on a charge of mischief by tearing up a promissory note for Rs. 20. Held that the offence charged fell under s. 477 of the Penal Code, and was therefore triable by a Sessions Court only.—In re MADURAI, I. L. R., 12 Mad. 54. [Wilkinson and Shephard, JJ. Sep. 11, 1888.]

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OFFENCES AS TO DOCUMENTS. &c. CHAP. XVIII.] [Secs. 478-483.

A, HAVING had certain transactions with B, wrote out a rough account, showing his indebtedness to B, and signed the total. The paper was not stamped. B afterwards presented it to A, and demanded payment of the total amount. A paid part only, and after an altercation fore up the paper. Held that the act of tearing up the paper constituted the offence of destroying a valuable security, and the harm caused was such that a person of ordinary, sense and temper would complain of it.—QUEEN-EMPRESS v. RAMASAMI, I. L. R., 12 Mad. 148. [Collins, C.J., and Wilkinson, J. Nov. 15, 20, 1888.]

OF TRADE AND PROPERTY-MARKS.

478. A mark used for denoting that goods are the manufacture or merchandize of a particular person is called a trademark, and for the purposes of this Code the expres-"trade mark" includes any trade-mark which is registered in the register of tride-marks kept under the Patents, Designs, and Trade-marks Act, † 1883. and any trade-mark which, either with or without registration, is protected by hav in any British possession or foreign State to which the provisions of the one hundred and third section of the Patents, Designs, and Trade-marks Act,

1883, are, under Order in Council, for the time being applicable.

Property-mark.

479. A mark used for denoting that moveable property belongs to a particular person is called a property-mark oronership is implied

480. Whoever marks any goods, or any case, package, or other receptacle containing goods, or uses any case, package, Using a false trade-mark. or other receptacle with any mark thereon, in a manner reasonably calculated to cause it to be believed that the goods so marked, or any coods contained in any such receptacle so marked, are the manufacture or merchandize of a person whose manufacture or merchandize they are not, is said to use a false trade-mark.

481. Whoever marks any moveable property or goods, or any case, package, or other receptacle containing moveable Using a false propertyproperty or goods, or uses any case, package, or other seceptacle having any mark thereon, in a manner reasonably calculated to cause it to be believed that the property or goods so marked, or any property or goods contained in any such receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

Punishment for using a false trade-mark or property-

Whoever uses any false trade-mark or any false property-mark Presy. Mag. shall, unless he proves that he acted without intent or Mag. of 1st to defraud, be punished with imprisonment of either Uncog. description for a term which may extend to one Warrant.

Bailable.

rear, or wish fine, or with both.

483. Whoever counterfeits any trade-mark or property-mark used by any other person shall be punished with imprison-Counterfeiting a tradement of either description for a term which may exmark or property-mark used tend to two years, or with fine, or with both. by another.

Not comp.

Ditto.

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[•] This part of Ch. XVIII. (i.e., ss. 478-489) has been substituted for the original by the Indian Merchandize Marks Act (IV. of 1889), s 2.

of Ses. Presy. Mag. or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

484. Whoever counterfeits any property-mark used by a public servant, interfeiting a mark used or any mark used by a public servant to denote that Counterfoling a mark used any property has been manufactured by a particular by a public servant. person, or at a particular time or place, or that the property is of a particular quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Difto.

485. Whoever makes or has in his possession any die, plate, or other instrument for the purpose of counterfeiting a trade-Making or possession of mark or property-mark, or has in his possession a any instrument for counterfeiting a trade-mark or protrade-mark or property mark for the purpose of deperty-mark. noting that any goods are the monufacture or merchandize of a person whose manufacture or merchandize they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years,

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

Selling goods marked with a counterfeit trade-mark or property-mark.

or with fine, or with both.

486. Whoever sells or exposes, or has in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade-mark or property-mark affixed to, or impressed upon, the same or to or upon any case, package, or other receptacle in which such goods are contained,

an offence under M86 .

- offence against this section, he had, at the time of the alleged offence against committing an of the alleged offence. mark, and (b) that, on demand made by, or on behalf of, the prosecutor, he gave all the information in his power with respect to the persons from whom
 - he obtained such goods or things, or (c) that otherwise he had acted innocently,

be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Ct. of Ses., Presy. Mag. Uncog. -Summons. Bailable: Not comp.

487. Whoever makes any false mark upon any case, package, or other receptacle containing goods, in a manner reason-Making a false mark upon or Mag. of 1st any receptacle containing or 2nd class. goods. ably calculated to cause any public segvant or any other person to believe that such receptacle contains goods which it does not contain, or that it does not contain goods which it

does contain, or that the goods contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall, unless he proves that he acted without intent to defraud, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

. Ditto.

488. Whoever makes use of any such false mark in any manner problem. bited by the last foregoing section shall, unless he Punishment for making use of any such false mark. proves that he acted without intent to defraud, be. punished as if he had committed an offence against that section.

CHAP. XIX.] BREACH OF CONTRACTS OF SERVICE. [Secs. 489, 490.

Tampering with property-mark property-mark with intent to cause injury.

Tampering with property-mark property-mar

Addition of new sections age section 489, Act XLV., the following sections shall be added, namely:—

Conterfeiting currencyof counterfeiting, any currency-note or bank-note, shall be punished with transportation for life, or with the imprisonment of either description for a term which may extend to ten years, and has shall also be liable to fine.

'Explanation.—For the purposes of this section and of sections 489B, 489C, and 489D, the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for, money.

Using as genuine forged or counterfeit currency-notes or bask-notes.

Using as genuine forged or counterfeit currency-note or bask-notes.

Counterfeit currency-note or bank-note, knowing or having reason to believe the same to be forged or counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of forged or counterfeit currency-notes or bank-note, knowing or having reason to be believe the same to be forged or counterfeit, and intending to use the same as genuine, or that it may be used as genuine, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

*480D. Whoever makes, or performs any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument, or materials for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeit.

ing any currency-note or bank-note, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

not a contract, the breach of which is punishable by s. 490 of the Penal Code.—IN THE MATTER OF NOWA TEWAREE, 6 W. R. 80. [Kemp and Pundit, JJ. Oct. 3, 1866]

Quare.—Whether the words, "during a voyage or journey," in s. 690 of the Penal Code, do not limit the offence made under that section to offences against travellers. That section, however, does not apply to a contract to place the defendant's carts at the

Retirm, then are however and truck are very thing be aware and some of mentioned are and the server and some of the server and some server and server se

was it smable to supply her own waits can as be changed into cook & entaphonia to attendo supost SECS. 491-493.] OFFENCES RELATING TO MARRIAGE. ГСнар, ХХ.

> complainant's disposal for a specified time to convey a thing from where he pleases to where he pleases.—Sage v. Nirunjun Chatterjee. 9 W. R. 12 [Kemp and Jackson,]]. Feb. 3, 1868.]

> In Unwin v. Clarke (I L. R, Q B., 417) the contract was held not to be terminated by conviction and punishment; but the Calcutta High Court has ruled the contrary.—2 Rev., Jud., and Pol. Jour 24.

491. Whoever, being bound by a lawful contract to attend on, or to supply the wants of, any person who, by reason of youth Breach of contract to attend

or Mag. of 1st or 2nd class. on and supply the wants of or of unsoundness of mind, or a disease or bodily helpless persons. weakness, is helpless or incapable of providing for

his own safety, or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred repees, d or with both. THE Indian Law Commissioners give the following reasons for framing the above section: "Persons who contract to take care of infants, of the sick and norphet, lay them-

selves under an obligation of a peculiar kind, and may, with propriety, be punished if they omit to discharge their duty. They generally come from the lower ranks of life, and would be unable to pay anything. They therefore proposed to add to this class of contracts the sanction of the penal law."

492. Whoever, being bound by lawful contract in writing to work for

another, person as an artificer, workman, or labour-Breach of contract to serve er, for a period not more than three years, at any 4 5 at distant place to which serplace within British India, to which, by virtue of the rink-th vant is conveyed at master's expense. contract, he has been, or is to be, conveyed at the expense of such other, voluntarily deserts the service of that other during the conexpense. w 64 secution tinuance of his contract, or without reasonable cause fetuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both, unless the employer has ill-treated him, or neg.

> S. 492, which makes it an offence for "an artificer, workman, or labourer" to break his contract of service under the circumstances specified in the section, does not apply to domestic servants.—Crown v. Kallu, Panj. Rec., No. 20 of 1876. WHERE a labourer has once been punished under s. 402, it has been held that his re-

> fusal to fulfil the terms of the contract on his release from imprisonment does not render him liable to a second punishment.—2 Rev., Jud, and Pol. Jour. 24.

CHAPTER XX. OF OFFENCES RELATING TO MARRIAGE.

493. Every man who by deceit causes any woman who is not lawfully

married to him to believe that she is lawfully mar-Cohabitation caused by a man deceitfully inducing a ried to him, and to cohabit or have sexual intercourse

(2 ty being referrer)

belief of lawful marriage. with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. & HINDU Christian convert relapsing into Hinduism, and marrying a Hindu woman.

cannot be convicted of bigamy, on the ground that he has another wite living whom he married while a professing Christian.—Pro., Nov. 8, 1866, 3 Mad. H. C. R. Ap. 7- [Holloway and Innes,]]. Nov. 8, 1866. · [Holloway and Innes, I]. able for i

Ct. of Ses. Uncog.

Warrant

Not comp.

Not bailable.

Presy. Mag

Uncog.

Summons.

Ditto.

Bailable. Comp.

lected to perform the contract on his part.

MARRIAGE must be presumed from the fact of a man and woman living together and from their own evidence (altogether unrebutted) that she is his legally magned wife.—
QUEEN v. WUZZERAH, 17 W. R. 5; 8 B. L. R., Ap., 63. [Loch and Ainslie, JJ, Jan. 6, 1872.]
Överruled by Empress v. Pitambur Singh, I. L. R., 5 Cal. 566; 5 C. L. R. 597, infra.

THE provisions of s. 50 of the Evidence Act show that, where marriage is an ingredient in an offence, as in bigamy, adultery, and the enticing of married women, the fact of the marriage must be strictly proved.—EMPRESS v. PITAMBUR SINGH, I. L. R., 5 Cal. 566; 5 C. L. R. 597. [Garth, C.]., and Jackson, Pontifex, Morris, and McDonell, J. Dec. 8, 1879. Follows Queen v. Smith, 4 W. R. 31. Overrules Queen v. Wuseerah, 17 W. R. 5; 8 B. L. R., Ap., 63. Discussed in Queen-Empress v. Subbarayan, I. L. R., 9 Mad. 9. Followed in Empress of India v. Kallu, I. L. R., 5 All. 233; Empress v. Arshed Ali, 13 C. L. R. 125.

S. 50 of the Evidence Act (l. of 1872) runs as follows:-

CHAP. XX.]

When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject is a relevant fact, provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under s. 494, 495, 497, or 498 of the Indian Penal Code.

Illustrations.

(a.) The question is, whe her A and B were married.

The fact that they were usually received and treated by their friends as husband and wife is relevant.

(b.) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

Whoever, having a husband or wife living, marries in any case in Ct. of Sestinces, trying again caring life—which such marriage is void by reason of its taking warrant. place during the life of such husband or wife, shall Bailable. Marrying again caring life-time of husband or wife.

the punished with imprisonment of either description for a term which may ex- Not comp.

tend to seven years, and shall also be liable to fine.

Forbes and Couch, JJ. April 22, 1864.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent | He of jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent maxiage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts, so far as the same are within his or her knowledge. I the same are within this or her knowledge. I then the facts of the with the fact of the Manual of the same are within the fact of the Manual of the same are within the fact of the Manual of the same are withing in his or her knowledge. I the same are within the same are within the same are within the same are within the same are withing in his or her within the same are wit

he marries a fifth-Mac. M. Law, p. 255. HELD that a custom of the Talapoda Koli caste, that a woman should be permitted to leave the husband to whom she has been first married, and to contract a second marriage (natra) with another man, during the lifetime of her first-husband and without his consent, was invalid, as being entirely opposed to the spirit of the Hindu law; and that such marriage was " void by reason of its taking place during the life of such husband," and, therefore, punishable as regards the woman under s. 404 of the Penal Code; and that the man with whom the woman so married, having had sexual intercourse with her, and it being found that he did not honestly believe that she had become his wife, was guilty of

adullery under s. 467.--REG. v. KARSAN GOJA; REG. v. BAI RUPA, 2 Bom. H. C. R. 117.

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A HINDU Christian convert relapsing into Hinduism, and marrying a Hindu woman, cannot be convicted of bigamy, on the ground that he has another wife living whom he married while a professing Christian.—PRO., Nov. 8, 1866, 3 Mad. H. C. R., Ap., 7. [Holloway and Innes, JJ. Nov. 8, 1866.]

A NIKA-MARRIAGE falls within the purview of ss. 494 and 495; it is a well-known and well-established form of marriage amongst Mahomedans.—QUEEN v. JUDDO MUSSUL-MANEE, 6 W. R. 60. [Seton-Karr, J. Aug. 27, 1868.] And the issue of a nika-marriage would be legitimate under the Mahomedan law.—Sheikh Monegooddeen v. Rambhun Bajeekur, 18 W. R. 28. [Kemp and Glover, JJ. July 17, 1872.]

On a trial for bigamy, the defence was that the marriage of the woman (the accused) with the prosecutor was null and void, as the woman was a minor at the time, and married without the consent of her relations. She was a widow when she married the prosecutor. Held that her marriage with the prosecutor was legal.—MADHA v. MUSSAMWAF JEEWEE, Panj. Rec., No. 2 of 1869.

Held on a trial for bigamy, that the apostacy of a Hindu wife does not dissolve the marriage-union.—Crown σ. Mussammat Gholam Fatima, Panj. Rec., No. 32 of 1870.

COURTS of law will not recognize the authority of a caste to declare a marriage void, or to give permission to a woman to re-marry. Bond-fide belief that the consent of the caste made the second marriage valid does not constitute a defence to a charge, under s. 494 of the Penal Code, of marrying again during the lifetime of the first husband, or to a charge of abetment of that offence under that section combined with s. 109.—Reg. v. Sambhu Raghu, I. L. R., 1 Bom. 347. [Melvill and Nanabhai Haridas, JJ. Sep. 7, 1876.]

If the first marriage is valid, it is bigamy to marry again (i.e., to go through a form of marriage known to the law as capable of producing a valid marriage), though the second marriage be void on another ground besides that of its being bigamous.—GURBAKSH SINGH v. SHAMA SINGH, Panj. Rec., No. 19 of 1876.

A MAHOMEDAN guardian of a married female infant, who, while her husband is living, causes a marriage ceremony to be gone through in her name with another man, but without her taking any part in the transaction, does not commit the oftence of abetment under ss. 109 and 494 of the Penal Code. The practice of instituting criminal proceedings with a view to determining disputes arising in cases of this class condemned.—In the Matter of the Empress v. Abbool Kurrbem, I. L. R., 4 Cal. 10. [White and Prinsep, JJ. July 9, 1878.]

A CRIMINAL Court is bound to decide the question of marriage when it is essential to the decision of the question whether an offence has been committed or not. The doctrine of a certain school of Mahomedan divines in regard to the competency of a woman to marry again after the absence of her husband for four years does not entitle a woman so re-marrying to the benefit of the exception to s. 494.—Alam Shah v. Jewan, Panj. Rec., No. 57 of 1858.

THE accused were charged before a Magistrate of the first-class with enticing away a married woman (s. 498). The inquiry having shown that an offence under 3.494 had apparently been committed, the proceedings were forwarded under s. 45, Criminal Procedure Code (corresponding with s. 346, Act X. of 1882), for disposal to the Magistrate of the District, who tried the case de novo and convicted the accused under ss. 409 and 494. Held that the preferring a complaint was an essential condition of the Magistrate's jurisdiction to inquire into and try an offence falling under ch. 20 of the Penal Code, and the extent of the jurisdiction so founded was limited to offences covered by the facts complained of; that there had been no complaint of an offence under s. 494; and that the conviction was therefore illegal. Held also that the Magistrate, before whom the compaint was made of an offence under s. 498, had jurisdiction to try it, and therefore that it was not competent for him to proceed ander s. 45, Criminal Procedure Code (corresponding with s. 346, Act X. of 1882).—FAIZ AHMED v. EMPRESS, Panj. Rec., No. 5 of 1879.

The conversion of a Hindu wife to Mahomedanism does not, ibso facto, dissolve her marriage with her husband; she cannot, therefore, during his lifetime, enter into any other valid marriage contract. Her going through the ceremony of nika with a Mahomedan is consequently an offence under s. 494 of the Penal Code.—Govt. of Bombay v. Ganga, I. L. R., 4 Bom. 330. [Pinhey and Melvill, J]. Jan. 26, 1880.]

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A CONVICTION under s. 494 of the Penal Code for marrying again during the lifetime of a busband or wife cannot be upheld where there is evidence to show that such marriages are not unusual among persons of the same caste as the accused, and it is not proved that such marriages are void.—IN THE MATTER OF MUSSAMUT CHAMIA, 7 C. L. R. 354. [Garth, C.J., and Field, J. Nov. 23, 1880.]

A MEMBER of the daste of Ajanya Rajput Guzars, residing in Khandesh, executed a deed of divorce to his wife. The Court held on the evidence that the deed was proved, and that in this caste a flusband was, for a sufficient reason, such as incontinence, allow. The deed in the present case had not been executed for a sufficient reason; and that, consequently, the parties entering into a second marriage were guilty of an offence under s. 494 of the Penal Code, and that the priest who officiated at that marriage was an abettorunder ss. 494 and 109. Mere consent of persons to be present at an ingral marriage, or their presence in pursuance of such consent, or the grant of accommodation in a house for the marriage, does not necessarily constitute abetment of such marriage.—Empars v. Umi, I. L. R, 6 Bom. 126. [Melvill and Kemball, J]. Jan. 11, 1882.]

Where the wife of a lunatic was prosecuted for bigamy on the complaint of the lunatic's brother, neld that the complainant, merely as brother of the lunatic, was not a "person aggrieved by such offence" within the meaning of s. 198 of the Criminal Procedure Code (Act X. of 1882), and that the complaint could not be entertained.—Queen-Empress v. Bai Rukshmoni, I. L. R., 10 Bom. 340. [Birdwood and Jardine,]]. Jan. 21, 1886.]

A was baptized in infancy into the Roman Catholic Church, but subsequently relapsed, with the rest of the family, into Hinduism, and was married to a Hindu. Her
Hindu husband since discarded her, and alleged that he would not have married her if
he had known that she had been baptized. A was subsequently re-admitted into the
Roman Catholic Church, and married by B, a priest, to a Roman Catholic during the
fifetimes of her Hindu husband. Held that A's marriage with the Hindu was subsisting
and valid at the time of her Christian marriage; that she was guilty of the offence of
bigarny; and that B was guilty of abetting that offence.—Lopes v. Lopes (I. L. R., 12
Cal. 700) discussed.—In re MILLARD, I. L. R., 10 Mad. 218. [Collins, C.J., and Parker, J.
April 1, 1887.]

THE petitioner, originally a Hindu woman, and the illegitimate offspring of Chattri parents, was duly married according to Hindu rites to D, who was also by caste a Chattri. Subsequent to the marriage, the petitioner became a convert to Mahomedanism, and then married a Mahomedan. She was charged with, and convicted of, an offence under s. 494 of the Penal Code. It was contended on her behalf that—(1) the marriage between her and D was invalid under Hindu law by reason of her illegitimacy and the consequent difference of caste between the contracting parties; (2) the marriage between her and D became dissolved under the Hindu law on her conversion to Mahomedanism; and (3) the second marriage was not void under the Mahomedan law by reason of its taking place in the lifetime of D, and that the conviction was therefore erroneous. There was no evidence of any notice having been given to D previous to the second marriage calling on him to become a Mahomedan. *Held* that illegitimacy under Hindu law is no absolute disqualification for marriage, and that, when one or both contracting parties to a marriage are illegitimate, the marriage must be regarded as valid, if they are recognized by their caste people as belonging to the same caste. Held also that there is no authority in Hindu law for the proposition that an apostate is absolved from all civil obligations, and that, so far as the matrimonial bond is concerned, such a view would be contrary to the spirit of that law, which regards it as indissoluble, and that accordingly the marriage between the petitioner and D was not, under the Hindu law, dissolved by her conversion to Mahomedanism. Rahmed Beebee v. Rokeya Beebee (t Norton's Leading Cases on Hindu Law, p. 12) dissented from. Held further that, as the validity of the second marriage depended on the Mahomedan law, and as that law does not allow a plurality of husbands, it would be void or valid according as the first marriage was or was not subsisting at the time it took place. That no notice having been given to D as required by Mahomedan law previous to the second marriage, and no recourse having been had to the Courts for the purpose of obtaining a declaration that the former marriage was dissolved, and as British India cannot be held to be a foreign country for the purpose of rendering such notice unnecessary, the previous marriage was not dissolved under Mahomedan law, and the subsequent marriage was therefore void. Held accordingly that Conse recoils whom itself

SEC. 405.] OFFENCES RELATING TO MARRIAGE.

[Сиар. 🗶Х.

that the conviction was right.—In re RAM KUMARI, I. L. R., 18 Cal. 164. Macpherson and Banerjee, JJ. Feb. 18, 1891.

B, a Mahomedan girl, whose father was dead, was alleged to have been given in marriage by her mother to j some years before she attained puberty. Prior to her attaining puberty, J was sentenced to a term of imprisonment for theft. While he was in jeil, ing puberty, J was sentenced to a term of imprisonment for theft. While he was in jeil, B, after she had attained puberty, contracted a marriage with \$\mathbb{E}\$. The marriage with J was never consummated. On J being released from jail, he proceeded to prosecute B and P for bigamy and abetment of bigamy, and also charged P with adultery. It appeared that before taking proceedings, I requested B to return to him, but she refused to do so. The marriage between B and J was sought to be proved by the evidence of J, B's mother, and two witnesses who were said to have been present. B and P were both convicted. Held, on appeal, that the evidence of the marriage between B and I was insufficient to justify a conviction in the absence of proof that a Mollah was present at the ceremony, or that the sigha required to be recited at the marriage of minors was recited, or the akd performed. Held, further, that, assuming B to have been given in marriage to J when a mere child by her mother, she had the option of either ratifying or repudiating such marriage on attaining puberty. Under the Shia law, such a marriage is of no effect until it has been ratified by the minor, and under the Sunni law it is effective till cancelled by the minor. Under both schools of law, the minor has the absolute power, on attaining puberty, to ratify or cancel unauthorized marriage, though under the Sunni law ratification is presumed if the girl remains silent after attaining puberty, and allows the marriage to be consummated. Held, on the facts of the case, that the circumstances afforded sufficient indication, even assuming the girl to be governed by the Sunni law, that she never ratified the marriage. Held, also, that a judicial order was not necessary to effect the cancellation of the marriage. BADAL AURAT v. QUEEN-EMPRESS, I. L. R., 19 Cal. 79. [Beverley and Ameer Ali, J]. Sep. 21, 1891.]

A CONVICTION under s. 494 of the Penal Code cannot be supported where there is evidence to show that, by the custom of the caste, sagai or nikka marriage wes admissible. and that the husband had relinquished his wife. In re Mussamut Chamia (7 C. L. R. 354) followed.—JUKNI v. QUEEN-EMPRESS, I. L. R., 19 Cal. 627. [O'Kinealy and Ameer Ali,]]. June 7, 1892.]

Ct. of Ses. Uncog. Warrant Not bailable. Not comp.

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

495. Whoever commits the offence defined in the last preceding section, having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also, be liable to fine.

A WOMAN, who does not use all reasonable means in her power to inform hefself of the fact of her first husband's alleged demise, and contracts a second marriage within 16 months after cohabitation with her first husband without disclosing the fact of the former marriage to her second husband, is liable to enhanced punishment under et 495. Penal Code.—Queen v. Enai Beebee, 4 W. R. 25. [Loch, Kemp, and Glover, 4]. Nov. 20. · 1865. j

A NIKA-MARRIAGE falls within the purview of ss. 494 and 495 of the Penal Code. It is a well-known and well-established form of marriage amongst Mahomedans.- Queen a. Ludoo Mussulmanee, 6 W. R. 60. [Seton-Karr, J. Aug. 27, 1866.]

THE nika-form of marriage is well-known and established among Mahomedans. The issue of a nika-marriage would be legitimate under the Mahomedan law - SHEIK MONEEROODEEN v. RAMDHUN BAJEEKUR, 18 W. R. 28. [Kemp and Ciover, J]. July

THE act of causing the publication of banns of marriage is an act done in the preparation to marry, but does not amount to an attempt to marry. Where, therefore, a man having a wife living, caused the banns of marriage between himself and a woman to be published, he could not be punished for an attempt to marry again during the lifetime of his wife.—Reg. v. Peterson, I. L. R., 1 All. 316. [Pearson, J. Dec. 6, 1876.]

THE elder paternal uncle of a Mahomedan girl, a minor, disposed of her in marriage, after he knew she had previously been given in lawful marriage by his younger brother. Held that the act did not, per se, constitute a criminal offence, even though the second

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marriage were valid, it appearing that the accused was the only person concerned in the second marriage who knew of the first, and that the girl was not present. A and B were indicted under so. 109 and 495 of the Penal Code—A for giving his niece (a minor) in marriage, she being then married, and B for aiding therein. The girl was not present at the marriage, and there was no evidence to show A had conspired with any person but, B, whom the jury acquitted. Held that the acquittal of B involved the acquittal of A.—AB-DOOL KURRERM v. EMPRESS, 3 C. L. R. St. [White and Prinsep, JJ. July 19, 1878]

Marriage-ceremony fraudulently gone through without jawful marriage.

496. Whoever dishonestly or with a fraudulent intention goes through the Ct. of Ses. ceremony of being married, knowing that he is not Uncog. thereby lawfully married, shall be punished with Not bailable. imprisonment of either description for a term which Not comp. may extend to seven years, and shall also be liable to fine.

Proof of dishonest or fraudulent intent is necessary for a conviction under s. 406 of the Penal Code of falsely going through the ceremony of marriage. The mere act of allowing the marriage to take place at one's house does not amount to the abetment of an illegal marriage. - QUEEN v. KUDUM, W.R., Sp. 13. [Steer and Morgan, JJ. Feb.24, 1864.]

497. Whoever has sexual intercourse with a person who is, and whom he Presy, Mag knows or has reason to believe to be, the wife of or Mag. of Adultery. another man without the consent or connivance of 1st class. Uncog. that man, such sexual intercourse not amounting to the offence of rape, is guilty Warrant. of the offence of adultery, and shall be punished with imprisonment of either Bailable. description for a term which may extend to five years, or with fine, or with both. Comp. ln such case the wife shall not be punishable as an abettor.

HELD that a custom of the Talapda Koli caste, that a woman should be permitted to leave the husband to whom she has been first married, and to contract a second marriage (natra) with another man during the lifetime of her first husband, and without his consent, was invalid, as being entirely opposed to the spirit of the Hindu law, and that such marriage was "void by reason of its taking place during the life of such husband," and therefore punishable, as regards the woman, under s. 494 of the Penal Code; and that the man with whom the woman so married, having had sexual intercourse with her, and it being found that he did not honestly believe that she had become his wife, was guilty of adultery under s. 497.—REG. v. KARSAN GOJA; REG. v. BAI RUPA, 2 Bom. H. C R. 117. [Forbes and Couch, J]. April 22, 1864.]

A PERSON convicted of adultery under s. 497 of the Penal Code need not be convicted also under s. 498; far less where there is no taking or enticing away of the woman.—QUEEN v. POCHUN CHUNG, 2 W. R. 35. [Kemp and Glover, J]. Feb. 14, 1865.]

THE offence of adultery may be compounded: In proceedings founded on a charge of adultery, strict proof is necessary of the marriage of the woman with whom adultery is alleged, and the charge should be instituted by the husband of the woman. The Appellate Court will not uphold a conviction for adultery when the husband has shown that he has condoned the offence.—QUEEN v. SMITH (G. R.), 4 W. R. 31; I Ind. Jur., N. S., 8. [Kemp and Seton-Karr, JJ. Dec. 5, 1865.]

Wherethe husband of a woman, with whom the accused was alleged to have committed adultery, professed himself unwilling to proceed with the prosecution, and the Assistant Sessions Judge thereupon ordered the accused to be discharged, the Court, in the exercise of its discretion, declined to interfere.—REG. v. RAMLO JERIO, 5 Bom. H. C. R. 27. Couch, C.J., and Newton, J. Jan. 14, 1868.

WHERE a person accused of adultery sets up in defence a natrá, contracted with the 🙉 woman with whom heris alleged to have committed adultery, in accordance with the custom of his caste, the question the Court has to determine is, whether or not the accused honestly believed, at the time of contracting the natra, that the woman was the wife of another man.—RRG. v. MANOHAR RAIJI, 5 Bom. H. C. R. 17. [Couch, C.]., and Newton, J. Feb. 22, 1868.]

The death of the husband does not necessarily put an end to a prosecution for adultery under s. 497 of the Penal Code. The law only requires that the prosecution should be instituted by the husband.—Pro., July 13, 1869, 4 Mad. H. C. R., Ap., 55.

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THE accused committed house-trespass with intent to commit adultery. The bushand refused to make a charge of house-trespass with intent to commit adultery, but made a charge of house-trespass with intent to commit theft, which was disproved. It was held that the Magistrate had acted rightly in refusing to convict on the charge laid by the husband, though the accused admitted that he had trespessed to carry on an intrigue.—Pro, Nov. 15, 1869, 5 Mad. H. C. R., Ap., 5.

A ENTERED the house of B without the latter's permission, and committed adultery with B's wife. Held that A could be separately convicted of and punished for both the adultery and house-trespass, as they were distinct offences: but that, under the circumstances, B's wife was by law incapable of committing abetment of the house-trespass.—

CROWN v. SHEIKH MUNGLI, Panj. Rec., No. 5 of 1871.

WHERE the husband brought a specific complaint for adultery under \$.497, and the Magistrate framed a charge and convicted under \$.498, the Chief Court quasified the conviction.—Sher Sing v. Crown, Panj. Rec., No. 18 of 1873.

PROOF/of adultery required by a Criminal Court must not be less than that required in a divorce suit. There must be, where the wife and the alleged adulterer are not caught in the act, evidence of criminal intention and opportunity. And there must be no consent or connivance on the part of the husband.—Sher Ali v. Crown, Panj. Rec., No. 1 of 1874.

The fact that a charge under the Penal Code, s. 497, was triable with assessors, and not by a jury, would not affect the legality of a conviction of adultery before a jury. Quare.—Is the formal assent of a husband to a charge of adultery, added at the end of his deposition, a proper compliance with Act X. of 1872, s. 478 (corresponding with Act X. of 1882, s. 199)?—QUEEN v. LUCKHY NARAIN NAGORY, 24 W. R. 18. [Glover and Mitter, J]. June 28, 1875.]

The complainant, a Mahomedan, alleged that he had been married six times; that all the women were living, but that he kept two of the first four partially diverced (i. e., by pronouncing the words of divorce only once or twice, and not thrice) in order to let galize his marriage with the fifth and sixth, and so keep within the law which permitted him to have four wives. Accused was charged with adducting or committing adultery with complainant's sixth wife. Held that the woman in question was not the wife of the complainant. Conviction quashed.—RABNAWAZ KHAN v. CROWN, Panja Rec., No. 1 of 1875.

SAGAI wives, i. e., widows married in accordance with the custom of Sagai prevailing amongst the Koirees and other low castes of Behar, are so far the legal wives of either husbands as to justify the punishment of persons committing adultery with them.—Bissuram Koirre v. Empress, 3 C. L. R. 410. [Ainslie and Maclean, J]. Aug. 16, 1878.

K was accused by D and P. alleged to be D's wife, of raping P, and was committed for trial, charged in the alternative with rape or adultery. The evidence of marriage between D and P consisted of their statements that they were married to each other, and of a statement by K that P was D's wife. K was convicted on the charge of adultery. Held that such evidence, having regard, not only to s. 50 of the Evidence Act, 1872, but to the principle that strict proof should be required in all criminal cases, was not sufficient to establish the vital incident to the charge of adultery, namely, the marital relation of D and P. Empress v. Pitambur Singh (I. L. R., 5 Cal. 566) concurred in. Also that, as no complaint had ever been actually instituted by D against K for the offence of adultery, as contemplated by s. 478 of Act X. of 1872 (corresponding with s. 1992 Act X. of 1882), (the circumstance of D's appearing as a witness for the prosecution for the offence of rape not amounting to the institution of a complaint within the meaning of that section), K's conviction for adultery must be quashed.—Empress v. Kallu, I. L. R. 5 All. 233.

[Straight, J. Dec. 8, 1882.]

A MAN may be convicted of house-trespass with intent to commit adultery, even though the charge is made by a person other than the husband, provided there is no consent or connivance on the part of the husband.—3 Mad. Jur. 285.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Comp.

Enficing or taking away or detaining with a criminal intent that she may have illicit intercourse with any person, or conceals or detains

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rith that intent any such woman, shall be punished with imprisonment of either escription for a term which may extend to two years, or with fine, or with both.

The prisoners having been sentenced for abetment of abduction of a woman under s. roo and 408 of the Penal Code, and for wrongful confinement of her under s. 343, held hat both sentences could not stand, and that, as the essence of the case was abduction, he prisoners, as abettors therein, should be punished for it alone.—Queen v. Ishwar Churden Jogi, W. R., Sp., 21. [Loch and Seton-Karr,]]. April 12, 1864.]

Where a procuress was convicted for inducing a married woman of 20 to leave her husband's house, and the facts showed that the wife had made her deliberate choice (she being of mature age), and was determined of her own free will to leave her husband, and become a prostitute in Calcutta, the High Court altered the conviction from abduction to entinement aremarking that, whatever the wife's secret inclinations were, she would have had no opportunity of carrying them out had not the prisoner interposed.—Quern v. Srimoth Podder, I W. R. 45. [Kemp and Glover, J]. Dec. 16, 1864.] But, according to the case of Empress v. Kallu (I. L. R., 5 All. 233), and s. 199 of the Code of Criminal Procedure, neither the High Court nor any other Criminal Court has any jurisdiction to alter a charge of abduction to one of enticement. There must be a formal complaint of enticement by the party aggrieved.—ED.

Where the man and the woman are perfectly agreed, the act of the third party, who merely accompanies the woman from her husband's house, amounts to abetment only.—
RULINGS OF MAD. H. C., 1864, ON S. 408.

A PERSON convicted of adultery under s. 497 of the Penal Code need not be convicted also under s. 498, far less where there is no taking or enticing away of the woman.—QUEEN 7. POCHUN CHUNG, 2 W. R. 35. [Kemp and Glover, J]. Feb. 14, 1865.]

THE following remarks were made by the High Court, in upholding a conviction in a case in which an accused had eloped with a woman from a house in Calcutta, hired for her by her hasband, who was absent in Assam: "We cannot say (as the Sessions Judge said) that 'a wife is always the property of her husband, whether he is absent or present;' but we think it clear that a wife living in her husband's house or in a house hired by him for her occupation, and at his expense, is, during his temporary absence, living under his protection, so as to bring the case within the meaning of s. 408, provided, of course, that the defendant knew, or had reason to believe, that she was the wife of the man from whose protection he took her, or on whose behalf the person from whom he took her had charge of her, and also provided he took her with the intent specified in the Act. To hold otherwise would be to declare the worst cases of seduction not punishable under the Penal Code."—MUTTY KHAN v. MUNGLOO KHANSAMA, I Wyman's Rev., Civ., and Crim. Rep. 45; 5 W. R. 50. [Jackson and Glover, JJ. Mar. 6, 1866.]

UPON an indictment under s. 498 of the Penal Code, charging that the prisoner took away-one A, who was then, and whom he then knew to be, the wife of one M, with the intent that he might have illicit intercourse with the said A, held that there was a taking within the meaning of the section, although the advances and solicitations had proceeded from the woman, and the prisoner had for some time refused to yield to her request.—REG.

**PKUMARASAMI, 2 Mad. H. C. R. 331. [Scotland, C.]., and Bittleston, J. Mar. 13, 1868.]

In a charge under s. 498 of the Penal Code, the words of the section, "conceals or detains," must be taken to extend to the enticing or inducing a wife to withhold or conceal herself from her husband, and assisting her to do so, as well as to physical restraint or prevention of her will or action. Depriving the husband of proper control over his wife for the purpose of illicit intercourse is the gist of the offence, and a detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishments.—In re Sundara Dass Tevan, 4 Mad. H. C. R. 20; 3 Mad. Jur., No. 5, 186. [Scotland, C.]., and Ellis, J. Mar. 13, 1868.]

In a charge under s. 408 of the Penal Code (of taking away a married woman), marriage must be presumed from the fact of a man and woman living together and from their own evidence (altogether unrebutted) that she is his legally married wife.—QUEEN v. WUZEERAH, 17 W. R. 5:8 B. L. R., Ap., 63. [Loch and Ainslie,]]. Jan. 6, 1872.] Overruled by Empress v. Pitambur Singh, I. L. R., 5 Cal. 566; 5 C. L. R. 597.

WHERE the husband brought a specific complaint for adultery, under s. 497, and the Magistrate framed a charge and convicted under s. 498, the Chief Court quashed the conviction.—SHER SINGH v. CROWN, Panj. Rec., No. 18 of 1873.

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A FINDING exactly in the words of s. 498 of the Penal Code, that the prisoner took or enticed away a married woman from her husband or some person having the care of her on his behalf with intent that she may have illicit intercourse with any person, or concealed or detained such woman with a like intent—though not actually illegal, when it is doubtful which of the several offences has been committed, is a finding which ought not to be resorted to if it can be avoided, and it can be determined under which part of the section the prisoner is guilty.—QUBEN v. MUTHOORA NATH ROY, 22 W. R. 22. [Markby and Mitter]. Aug. 24, 1874.]

The accused were charged before a Magistrate of the first class with enticing away a married woman (s. 498). The enquiry having shown that an offence under s. 494 had apparently been committed, the proceedings were forwarded, under s. 45, Criminal Procedure Code (corresponding with s. 346, Act X. of 1882), for disposal to the Magistrate of the District, who tried the case de novo, and convicted the accused under ss. 100 and 494. Held that the preferring a complaint was an essential condition of the Magistrate's jurisdiction to inquire into and try an offence falling under Ch. XX. of the Penal Code and the extent of the jurisdiction so founded was limited to offences covered by the facts complained of; that there had been no complaint of an offence under s. 194; and that the conviction was therefore illegal. Held also that the Magistrate before whom the complaint was made of an offence under s. 498 had jurisdiction to try it, and, therefore, that it was not competent for him to proceed under s. 45, Criminal Procedure Code (corresponding with s. 346, Act X. of 1882).—FAIZ AHMED v. EMPRESS, Panj. Rec., No. 5 of 1870.

The accused were convicted by the Magistrate of the District of Lahore, exercising enhanced powers under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, 388, Act X. of 1882), of kidnapping a married woman (being a minor) from lawful guardianship for the purpose of prostitution, and sentenced under ss. 363 and 372, Penal Code, to terms of imprisonment exceeding three years. The proceedings were forwarded to the Sessions Judge, Lahore Division, for confirmation of the sentences. The Sessions Judge, holding that ss. 363 and 372, Penal Code, were inapplicable to married female minors, admitted the conviction, and directed the re-trial of the accused on a charge under s. 498, Penal Code Held that the order of the Sessions Judge was illegal: 1st, because ss. 363 and 372 were applicable to married as well as to unmarried female minors; 2nd, because the Sessions Judge was not competent under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, 380, Act X. of 1882), to direct a new trial upon a new charge; and order, because no complaint had been preferred of an offence falling under s. 498, Penal Code.—Crown v. Kammu, Panj. Rec., No. 12 of 1879.

An order of acquittal of an offence under s. 493 was upheld, where it was found that the complainant had divorced his wife previous to making his complaint.—HUKAM DIN v. ALLACHI, Panj, Rec., No. 27 of 1879.

A PERSON was prosecuted before a Criminal Court in the Punjab for enticing away a married woman with a criminal intent, an offence punishable under s. 498 of the Penal Code. Such prosecution was legally instituted in such Court, and such offence was properly triable by it. Such Court discharged such person under the provisions of s. 215 of Act X of 1872. Subssquently it appeared that such person was detaining such woman at a place in the North-Western Provinces, and he was prosecuted before a Criminal Court of the district in which such place was situated for the same offence as he had been prosecuted for before the Criminal Court in the Punjab, vis., enticing away such married woman, and was convicted of that offence. Held that, although his previous discharge did not bar the revival of a prosecution for the same offence, such prosecution could only be reviwed in the Punjab Court, and he could not be convicted under the latter part of s. 493 of the Penal Code fondetaining an enticed woman until the enticing had been proved, and such conviction had been properly set aside by the Court of Session—Empress v. Tima Singn, I. L. R., 3 All. 251. [Pearson and Oldfield,]]. "Sep. 1, 1880.]

In the absence of very clear evidence of custom, which, if well-founded, must be a matter of general notoriety, the cohabitation of a man and a woman under the Alyasantana system cannot be considered marriage so as to render punishable, under s. 498 of the Penal Code, a person who entices away the woman with the intents specified in that section.—Koraga v. Queen, I. L. R., 6 Mad. 374. [Turner, C.J., and Muttusami Ayyar, J. Feb. A, 1883.]

S AND G having been convicted of enticing away the wife of the complainant, the conviction was quashed on appeal, on the ground that, strict proof of marriage being necessary for a conviction under s. 498 of the Penal Code, the evidence adduced (vis., of

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DEFAMATION. [SEC. 499.

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the complainant, the woman, and her mother, who swore to the fact of the marriage) was not sufficient to enable the Court to form an opinion whether the marriage took place as a fact, and if indid take place, whether it was according to law. The accused did not cross-examine the witnesses as to the fact or validity of the marriage, or otherwise impugn it. Held that the marriage was sufficiently proved. Empress v. Pitambur Singh (I. L. R., 5 Cal. 566; 5 C. L. R. 597) discussed.—Queen-Empress v. Subbarrayan, I. L. R., 9 Mad. 9. [Muttusami Ayyar and Hutchins, J]. Aug. 25, 1885.]

THE words "such woman" in s. 498 of the Indian Penal Code do not mean such a woman as has been so enticed as mentioned in that section, but mean such woman whom the accused knows or has reason to believe to be the wife of any other man; the detention of such a-woman with the particular intent defined in the section is one of the offences made punishable under that section.—EMPRESS v. NIADAR, I. L. R., 10 All. 580. Straight, J. July 7, 1888.]

THE complainant charged the accused with an offence under s 366 of the Penal Code in respect of his wife. The Deputy Magistrate convicted the accused of an offence under s. 498 of the Penal Code, and sentenced him to one month's rigorous imprisonment. The Sessions Judge, being of opinion that the Deputy Magistrate had no jurisdiction to convict the accused under s. 498, there being no complaint by the husband under s. 199 of the Criminal Procedure Code, and that the offence did not fall under s. 238 of the Criminal Procedure Code, referred the case to the High Court. Held that such a case is within the intention of s. 238. The intention of the law is to prevent Magistrates inquiring of their own motion into cases connected with marriage, unless the husband or other person authorized moves them to do so. But when the husband is complainant, and brings his complaint under s. 366, a conviction under s. 498 may properly be had if the evidence be such as to justify a conviction for the minor offence, and yet insufficient for a conviction for the graver one.—JATRA SHEKH v. REAZAT SHEKH I. L. R., 20 Cal 483. [Pigot and Hill, JJ. Sep. 19, 1892.] But see, contra, Empress v. Kallu, l. L. R., 5 All. 233.

CHAPTER XXI.

OF DEFAMATION.

INDIAN LAW COMMISSIONERS' REPORT ON DEFAMATION.

THE essence of the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed.

According to the theory of the criminal law of England, the essence of the crime of private libel consists in its tendency to provoke breach of the peace; and, though this doctrine has not, in practice, been followed out to all the startling consequences to which it would legitimately lead, it has not failed

to produce considerable inconvenience. It appears to us evident that, between the offence of defaming and the offence of provoking a breach of the peace, there is a distinction as broad as that which separates their and murder. Defamatory imputations of the worst kind may have no tendency to cause acts of violence. Words which convey no discreditable imputation whatever may have that tendency in the highest degree. Even in cases where defamation has a tendency to cause acts of violence, the heinousness of the defamation, considered

as defamation, is by no means proportioned to its tendency to cause such acts: nay, circumstances which are great aggravations of the offence, considered as defamation, may be great mitigations of the same offence, considered as a provocation to a breach of the peace. A scurrilous satirely against a friendless woman, published by a person who carefully conceals his name, would be defamation in one of its most odious forms. But it would be only by a legal fiction that the satirist could be said to provoke a breach of the peace. the other hand, an imputation on the courage of an officer, contained in a private letter. meant to be seen only by that offiser and two or three other persons, might, considered as defamation, be a very venial offence. But such an imputation would have an obvious tendency to cause a serious breach of the peace.

On these grounds, we have determined to propose that defamation shall be made an offence, without any reference to its tendency to cause acts of illegal violence.

We considered whether it would be advisable to make a distinction between the different modes in which defamatory impu-

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INDIAN LAW COMMISSIONERS' REPORT ON DEFAMATION-fontd.

tations may be conveyed; and we came to the conclusion that it would not be advisable to make any such distinction.

By the English law, defamation is a crime only when it is committed by writing, printing, engraving, or some similar process. Spoken words reflecting on private character, however atrocious may be the imputations which those words convey, however numerous may be the assembly before which such words are uttered, furnish ground only for a civil action. Herein the English law is scarcely consistent with itself. famation be punished on account of its tendency to cause a breach of the peace, spoken defamation ought to be punished even more severely than written defamation, as having that tendency in a higher degree. A person who reads in a pamphlet a calumnious reflection on himself, or on some one for whom he is interested, is less likely to take a violent revenge than a person who hears the same calumnious reflection uttered. Public men, who have, by long habit, become callous to slander and abuse in a printed form, often show acute sensibility to imputations thrown on them to their faces. Indeed, defamatory words spoken in the presence of the person, who is the object of them, necessarily have more of the character of a personal affront. and are, therefore, more likely to cause a breach of the peace than any

The distinction which the English criminal law makes between written and spoken defamation is generally defended on the ground that written defamation is likely to be more widely spread and to be more per-These manent than spoken defamation. considerations do not appear to us to be entitled to much weight. In the first place, it is by no means necessarily the fact that written defamation is more extensively circulated than spoken defamation. Written defamation may be contained in a letter intended for a single eye. Spoken defamation may be heard by an assembly of many It seems to us most unreasonable that it should be penal to say in a private letter that a man is dissipated, and not penal to stand up at the town-hall, and there, before the whole society of Calcutta, falsely to accuse him of poisoning his father.

In the second place, it is not necessarily the fact that the harm caused by defamation is proportioned to the extent to which the defamation is circulated. Some slanders—and those slanders of a most malignant kind—can produce harm only while confined to a very small circle, and would be at once re-

futed if they were published. A malignant whisper addressed to a single hearer, and meant to go no further, may indicate greater depravity, may cause more intense misery, and may deserve for esevere punishment than a satire which has run through twenty editions. A person, for example, who, in private conversation, should infuse into the mind of a husband suspicions of the fidelity of a virtuous wife, might be a defamer of a far worse description than one who should insert the lady's name in a printed lampoon.

It must be allowed that, in general, a printed story is likely to live longer than a story which is only circulated in conversation. But, on the other hand, it is far easier for a calumniated person to clear his character either by argument, or by legal proceedings from a charge fixed in a printed form, than from a shifting rumour which nobody repeats exactly as he heard it. In general, we believe, a man would rather see in a newspaper a story discreditable to him which be had the means of refuting than know that such a story, though not published, was current in society.

On the whole, we are so far from being able to discover any reason for exempting any mode of defamation from all punishment, that we have not even thought it right to provide different degrees of punishment for different modes of defamation. We do not conceive that on this subject any general rule can, with propriety, be laid down. We have, therefore, thought it best to leave to the Courts the business of apportioning punishment with due regard to the circumstances of every case.

We have thought it necessary, under the peculiar circumstances of this counts to lay down for the guidance of the Courts a rule which, if we were legislating for a population, among whom there was a uniform standard of morality and honour, might appear superfluous. India is inhabited by races which differ widely from each other in manners, tastes, and religious opinions. Practices which are regarded as innocent by one large portion of society excite the horror of another large por-A Hindu would be driven to despair if he knew that he was believed by persons of his own race to have done something which a Christian or a Mussulman would consider as indifferent or as laudable. Where such diversities of opinion exist, that part of the law which is intended to prevent pain arising from opinion ought to be sufficiently flexible to suit those diversities. We have, therefore, directed the Judge not to decide

. INDIAN LAW COMMISSIONERS' REPORT ON DEFAMATION-contd.

the question whether an imputation be or be not defamatory, by reference to any particular standard, however correct, of honour, of morality, or of taste, but to extend an impartial protection to opinions which he regards as erroneous, and to feelings with which he has no sympathy.

There are nine excepted cases in which we propose to tolerate imputations prejudicial to character.

The exception which stands first in order will probably be thought by many persons objectionable. It is opposed to the rules of the English criminal law. It goes, we fear, beyond what even the boldest reformers of English law have proposed. It is at variance with the provisions of the French Code, and with the sentiments of the most distinguished French jurists. It is at variance also with the provisions of the Code of Louisiana. It is, therefore, with some diffidence that we venture to lay before the Governor-General in Council the results of a long and anxious consideration of this question.

The question is whether the truth of an imputation prejudicial to character should, in all cases, exempt the author of that imputation of unishment as a defamer. We conceive that it ought to exempt him.

It will hardly be disputed, even by those who dissent from us on this point, that there is a marked distinction between true and false imputations as respects both the degree of malignity which they indicate, and the degree of mischief which they produce. The accusing a man of what he has not done implies, in a vast majority of cases, greater depravity than the accusing him of what he The pain which a false imputahas done. tion gives to the person who is the object of it, is clear, uncompensated evil. There is no set-off whatever. The pain which a true imputation gives to the person who is the object of it is in itself an evil, and, therefore, ought not to be wantonly inflicted. But there is often some counterbalancing good. A true imputation may produce a wholesome effect on the person who has, by his misconduct, exposed himself to it. It may deter others from imitating his example. It may set them on their guard against his bad designs.

Not only doctrue imputations generally produce some good to counterbalance the evil caused by them, but in many cases this counterbalancing good appears to us greatly to preponderate. However skilfully penal laws may be framed, however vigorously they may be carried into execution, many bad practices will always be out of reach of the tribunals. The state of society would be deplorable, if public opinion did not repress

much that legislators are compelled to tolerate. The wisest legislators have felt this, and have assigned it as a reason for not visiting certain acts with legal punishment that those acts will be sufficiently punished by general disapprobation. It seems inconsistent and unwise to rely on public opinion in certain cases as a valuable auxiliary to the law, and, at the same time, to treat the expression of that opinion in those very cases as a crime.

It is easy to put cases about which there could scarcely be any difference of opinion. A person who has been guilty of gross acts of swindling at the Cape comes to Calcutta, and proposes to set up a house of agency. A person who has been forced to fly from England on account of his infamous vices repairs to India, opens a school, and exerts himself to obtain pupils. A captain of a ship induces natives to emigrate by promising to convey them to a country where they will have large wages and little work. He takes them to a foreign colony where they are treated like slaves, and returns to India to hold out similar temptations to others. man introduces a common prostitute, as his wife, into the society of all the most respectable ladies of the Presidency. A person in a high station is in the habit of encouraging ruinous play among young servants of the Company. In all these cases, and in many others which might be named, we conceive that a writer who publishes the truth renders a great service to the public, and cannot, without a violation of every sound principle, be treated as a criminal.

There are undoubtedly many cases in which the spreading of true reports prejudicial to the character of an individual would hurt the feelings of that individual without producing compensating advantage in any other quarter. The proclaiming to the world that a man keeps a mistress, that he is too much addicted to wine, that he is penurious in his house-keeping, that he is slovenly in his person, the raking up of ridiculous and degrading stories about the youthful indiscretions of a man who has long lived irreproachably as a husband and a father, and who has attained some post which requires gravity and even sanctity of character, can seldom or never produce any good to the public sufficient to compensate for the pain given to the person attacked, and to those who are connected with him. Yet we greatly doubt whether, where the imputations are true, it be advisable to inflict on the propagators of such miserable scandal any legal punishment in addition to that general aversion and contempt, with which their calling .

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and their persons are everywhere regarded. Even in such cases, the question whether the imputation be true or false is not an unimportant question. Those who would not allow truth to be, in such cases, a justification would admit that it ought generally to be a mitigating circumstance. Indeed, we find it impossible to imagine any case in which we should punish a man who told no more than the truth respecting another, as severely as if what he told had been a lie invented to blast the reputation of that other.

These two propositions, then, we consider as established—first, that, in some cases of prosecution for defamation, the truth of the imputation alleged to be defamatory ought to be a justification; secondly, that in the vast majority of such cases, if not in all, truth, if it be not a justification, ought to be a mitigation.

From these two propositions, a third proposition necessarily follows: that in all cases of prosecution for defamation, if the defendant avers that the imputations complained of as defamatory are true, the Court ought to go into the question of the truth of those

imputations.

This ought to be done, not only in justice to the public and to the defendant, but in justice to the innocent complainant. must not be forgotten that one of the most important ends which a person proposes to himself in prosecuting a slanderer is the refuting of the slander. He generally considers the punishment of the offender as a secondary object; and, when there is no circumstance of peculiar aggravation in the case, is often willing to stay proceedings after obtaining a retractation and apology. To clear his fame is his first object. It is, we conceive, an object for the attaining of which, he is entitled to the assistance of the But it is an object which cannot be attained unless the Courts go into the question of truth.

The effect of a rule excluding evidence of the truth is to put on a par descriptions of persons between whom it is desirable to make the widest distinction. The publicspirited man who warns the mercantile community against a notorious cheat, or advises families not to admit into their intimacy a practised seducer of innocence, is placed on the same footing with the slanderer, who invents the most infamous falsehoods against persons of the purest character. On the other hand, a man who has, without the slightest reason, been held up to the world as a seducer or a swindler, is placed in exactly the same situation with one who well deserves those disgraceful

So defective & the investigation names. that it leaves a suspicion lying on the most innocent, and no more than a suspicion lying on the most guilty.

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We therefore think that, in all cases of prosecution for defamation, the Courts ought to allow the question of truth to be gone into. But it, in all cases, the Courts allow the question of truth to be gone into, we are satisfied that no respectable person will venture to institute a prosecution for defamation in a case in which he knows that the truth of the defamatory matter is likely to be proved. He will feel that by prosecuting he should injure bis own character far more deeply than any libeller can However disagreeable it may be to his feeling, that a discreditable story concerning him should be repeated in society, and should furnish paragraphs for the newspapers, it must be much more disagreeable that such a story should be proved in open Court, by legal evidence. By prosecuting, he turns what was at most a strong suspicion While he forinto an absolute certainty. bears to prosecute, many people will probably disbelieve the scandalous report; many will doubt about its truth. The mere circumstance that he abstains from prosecuting is no proof of guilt. It is notorious that slanders are often passed by with silent contempt by those who are the objects of them. Indeed, in a country where the press is free, a man whose station exposes him to remark would have nothing to do but to prosecute, if he should institute legal proceedings every time that he might be calumniated.

It seems to us, therefore, certain that a man on whose character imputations bave been thrown which can be proved to he true will, if he possess ordinary prudence and ordinary sensibility, abstain from having recourse to a Court of law, which will fully investigate the truth of those imputations. By having recourse to a Court of law, he would show that he belonged to a class of persons who are the last that a llegislator would wish to favour, to that class of pes sons in whom the sense of shame is weak, and the malicious passion strong, and who are content to incur dishonour for the chance

of obtaining revenge. Being therefore of opinion that, in all cases of prosecution for defamation, evidence of the truth of the imputations alleged to be defamatory ought to be received, and being of opinion that practically there is no difference between receiving evidence of truth and allowing truth to be a justification, we have thought it advisable to provide expressly that truth shall always be a justification.

. INDIAN LAW COMMISSIONERS' REPORT ON DEFAMATION-contd.

By framing the lawthus, we have not, in the smallest degree, diminished the real security of private character, or the real risk of detraction. We have merely made the language of the Code correspond with its virtual operation.

As we are satisfied that no practical mischief will be produced by the rule which we have proposed, we think that its perfect simplicity and certainty are strong reasons

for adopting it.

If it be not adopted, it will be necessary to take one of two courses—either to provide that touth shall in no case be a justification, or to provide that truth shall be a justification in some cases, alld not in others. the former course we feel, for reasons which we have already assigned, insurmountable objections. The effect of such a state of the law would be that eminent public services would often be treated as crimes. the latter course be taken, we are convinced that it would be found impossible to draw any line approaching to accuracy. We are convinced that it would be necessary to leave to the Judges an almost boundless discretion—a discretion which no two Judges would exercise in the same manner.

It has been suggested to us, from quarters entitled to great respect, that it would be a preferable coarse to admit in every case the truth of matter-alleged to be defamatory to be given in evidence, for the purpose of proving that the accused person had not acted maliciously; but not to allow the proof of the truth to be a justification, if it should appear that reputation had been ma-

liciously assailed. If a provision of this kind were adopted, it would, for the reasons which we have already given, be in practice nugatory. For no respectable person would prosecute the author of an imputation which could be proved to be true. And we take it for granted that the law of procedure will not be framed in so cruel and unreasonable a manner as to permit a prosecution for defamation to be instituted in opposition to the wishes of the person defamed. Such a power of prosecution would scarcely ever be used by a friend of . the person defamed; it would never be used by a judicious friend; and it would be a most formidable weapon in the hands of a malignant enemy.

But if the provision which we are considering were not certain to be in practice nugatory, we should think it a highly objectionable provision. When an act is of such a description that it would be better that it should not be done; it is quite proper to look at the motives and intentions of the doer for

the purpose of deciding whetherehe shall be punished or not. But when an act which is really useful to society—an act of a sort which it is desirable to encourage—has been done, it is absurd to inquire into the motives of the doer for the purpose of puhishing him if it shall appear that his motives

were bad.

If A kills Z. it is proper to inquire whether the killing was malicious: for killing But if A saves is prima facie a bad act. Z's life, no tribunal inquires whether A did so from good feeling or from malice to some person who was bound to pay Z an annuity. For it is better that human life should be saved from malice than not at all. If A sets on fire a quantity of cotton belonging to Z, it is proper to inquire whether A acted maliciously. For the destruction of valuable property by fire is prima facie a bad act. But if Z's cotton is burning, and A puts it out, no tribunal inquires whether A did so from good feeling, or from malice to some other dealer in cotton, who, if Z's stock had been destroyed, would have been a great gainer. For the saving of valuable property from destruction is an act which it is desirable to encourage; and it is better that such property should be saved from bad motives than that it should be suffered to perish. Since then no act ought to be made punishable on account of malicious intention, unless it be in itself an act of a kind which it is desirable to prevent, it follows that malice is not a test which can with propriety be used for the purpose of determining what true imputations on character ought to be punished, and what true imputations on character ought not to be punished. the throwing of true imputations on character is not prima facie a pernicious act. may, indeed, be a very pernicious act. But we are not prepared to say that in the majority of instances it is so. We are sure that it is often a great public service; and. we are sure that it may be very pernicious when it is not done from malice, and that it may be a great public service when it is done from malice. It is perfectly conceivable that a person might, from no malicious feeling, but from an honest though austere and injudicious zeal for what he might consider as the interests of religion and morality, drag before the public frailties which it would be far hetter to leave in obscurity. It is also perfectly conceivable that a person who has been concerned in some odious league of villainy, and has quarrelled with his accomplices, may, from vindictive feelings, publish the history of their proceedings, and may, by doing so, render a great service to society.

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Suppose that a knot of sharpers live by seducing young men to the gaming table, and pillaging them to their last rupee. Suppose that one of these knaves, thinking himself ill-used in the division of the plunder, should revenge himself by printing an account of the transactions in which he has been concerned. He is prosecuted by the rest of the gang for defamation. He proves that every word in his account is true. But it is admitted that his only motives for publishing it were rancorous hatred and disappointed rapacity. It would surely be most unreasonable in the Court to say: "You have told the public a truth which it greatly concerned the public to know. You have been the saving of many promising youths. You have been the means of ridding society of a dreadful pest. You have done, in short, what it was most desirable that you should do. But as you have done this, not from public spirit, but from dislike of your old associates, we pronounce you guilty of an offence, and condemn you to fine and imprisonment."

It is evident that society cannot spare any portion of the services which it receives. Far from scrutinizing the motives which lead people to render such services, and punishing such services when they proceed from bad motives, all societies are in the habit of offering motives addressed to the selfish passions of bad men for the purpose of inducing those men to do what is beneficial to the mass. We offer pardons and pecuniary rewards to the worst members of the community for the purpose of inducing them to betray their accomplices in guilt. the quarrels of rogues are the security of honest men is an important truth which has passed into a proverb; and of that security we should, to a certain extent, deprive honest men if we were to make it an offence in one rogue to speak the truth about another rogue under the influence of passions excited in the course of a quarrel.

We have hitherto argued this point on the supposition that by malice is meant real malice, and not a fictitious, a constructive malice. We have the strongest objections to introducing into the Code such a kind of malice—a malice of which a person may be acquitted when it is clear that he has acted from the most deadly personal rancour, and found guilty when those who find him guilty are satisfied that he has acted only from the best feelings—a malice which may be only the technical name for benevolence.

On these grounds, we recommend to the Governor-General in Council that the first exception, as we have drawn it, be suffered to stand part of the Code.

The remaining exceptions will not require so long a defence. By cl. 471, we allow the public conduct of public functionaries to be discussed, provided that such discussion be conducted in good faith. That the advantages arising from such discussion far more than compensate for the pain which it occasionally gives, will hardly be disputed by

any English statesman.

But there are public men who are not public functionaries. Persons who hold no office may yet, in this country, take a very active part in urging or opposing the adoption of measures in which the community is deeply interested. It appears clear to us that every person ought to be allowed to comment, in good faith, of the proceedings of these volunteer servants of the public, with the same freedom with which we allow him to comment on the proceedings of the official servants of the public. We have provided for this by cl. 472.

By cl. 473, we have allowed all persons freely to discuss in good faith the proceedings of Courts of law, and the characters of parties, agents, and witnesses, as connected with those proceedings. It is almost universally acknowledged that the Courts of law ought to be thrown open to the public. But the advantage of throwing them open to the public will be small indeed, if the few. who are able to press their way into a Court, are forbidden to report what has passed there to the vast numbers who were absent, or if those who are allowed to know what has passed are not allowed to comment on what has passed. The only reason that the whole community is not admitted to hear every trial that takes place is that it is physically impossible that they should find room; and by cl. 473, we do our best to counteract the effect of this physical inflossibility.

Whether public writers ought to be allowed to publish comments on trials, while those trials are still pending is a question which, in the present state of India, it is hardly worth while to discuss. We have not thought it necessary to insert any provision on that subject in the chapter of offences against public justice; and such a provision, even if it were necessary, would evidently not belong to the head of defamation, for the harm done by such comments, as respects public justice, is exactly the same when the comments are laudatory as when they are abusive.

By cl. 474, we allow every person to criticise, in good faith, published books, works of art which are publicly exhibited, and other similar performances.

. INDIAN LAW COMMISSIONERS' REPORT ON DEFAMATION-contd.

By cl. 475, we allow a person under whose authority others have been placed, either by their own consent, or by the law, to censure, in good faith, those wheare so placed under his authority, as far as regards matter to which that authority relates.

By cl. 476, we allow a person to prefer as accusation against another, in good faith, to any person who has lawful authority to

restrain or punish the accused.

By cl. 477, we have excepted from the definition of defamation private communications which a person makes in good faith, for the protection of his own interests; and by cl. 478, we have excepted private com-munications which apperson makes in good faith for the benefit of others.

It will be observed that in the eight last

exceptions we do not require that an imputation should be true. We require only that it should be made in good faith. For to require in these cases that the imputation should be true, would be to render these ex-Whether a public ceptions mere nullities. functionary is or is not fit for his situation; whether a person who has bestirred himself to get up a petition in favour of a public measure ought to be considered as an enlightened and public-spirited citizen, or as a foolish meddler; whether a person who has been tried for an offence was or was not guilty; which of two witnesses who contradicted each other one trial ought to be believed; whether a portrait is like; whether a song has been well sung; whether a book is well written: these are questions about which honest and discerning men may hold opinions diametrically opposite; and to require a man to prove to the satisfaction of a Court of law that the opinion which he has expressed on such a question is a right opinion, is to prohibit all discussion on such questions. The same may be said of those private communications which we propose to allow. It is plainly desirable that a merchant should disclose to his partners his unfavourable opinion of the honesty of a person with whom the firm has dealings. It "Is desirable that a father should caution his son against marrying a woman of bad character. But if the merchant is permitted to say to his partners, if the father is permitted to say to his son, only what can be legally proved before a Coupt, it is evident that the permission is worth nothing.

Whether an imputation be or be not made in good faith is a question for the Courts of law. The burden of the proof will lie sometimes on the person who has made the imputation, and sometimes on the person on whom the imputation has been thrown. No

general rule can be laid down. Yet scarcely any case could arise respecting which a sensible and impartial Judge would feel any doubt. If, for example, a public functionary were to prosecute for defamation a writer who had described him in general terms as incapable, the Court would probably require the prosecutor to give some proof of bad faith.

If the prosecutor had no such proof to offer, the defendant would be acquitted. the prosecutor were to prove that the defendant had applied to him for money, had promised to write in his praise if the money were advanced, and had threatened to abuse him if the money were withheld, the Court would probably be of opinion that the defendant had not written in good faith, and would convict him.

On the other hand, if the imputation were an imputation of some particular fact. or an imputation which, though general in form, yet implied the truth of some particular fact, which, if true, might be proved, the Court would probably hold that the burden of proving good faith lay on the defendant. Thus, if a person were to publish that a Collector was in the habit of receiving bribes from the zemindars of his district, and were unable to specify a single case, or to give any authority for his assertion, the Courts would probably be of opinion that the imputation had not been

made in good faith. Again, if a critic described a writer as a plagiarist, the Courts would not consider this as defamation without very strong proof of bad faith. But if it were proved that the critic had, like Lauder, interpolated passages in old books in order to bear out the charge of plagiarism, the Court would doubtless be of opinion that he had not criticised in good faith, and would con-

vict him of defamation.

It will be necessary to provide in the Code of Procedure rules for pleading in cases of defamation, which may give to an innocent man who has been calumniated the means of clearing his character. It will be proper to provide that a defendant who is accused of defamation, and who rests his defence on the truth of the imputation alleged to be defamatory, shall be held strictly to the proof of the substance of the imputation if the imputation be particular, and shall be compelled to descend to particulars in his plea, if the imputation be general. It will not be expected that should here go into any details respecting the law of criminal pleading. It is sufficient here to say that the importance of fram-

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ing that part of the law in such a manner as to give full protection to persons whose character has been unjustly aspersed has not escaped our attention.

We may here observe that an imputation which is not defamatory may, under certain circumstances, be punishable on other grounds. Such an imputation may be intended to excite disaffection. If so, though not punishable as defamation, it will be punishable as sedition. An attack made, in good faith, on the public administration of the Governor of a Presidency, will in no case be a defamation. But if the author of it designed to inflame the people against the Government, he will be liable to punishment under cl. 113.

Again, an imputation which is not defamatory may be intended to excite a mob to violence against an individual. If so, the author of the imputation is punishable under cl. 04.

Again, an imputation which is not defamatory may be uttered in the hearing of the person who is the object of it for the purpose of wantonly and maliciously annoying that person. If so, it is punishable under cl. 485. There are many cases in which it is fit that unpleasant truth should be told respecting an individual But there is no case in which it is desirable that such truth should be told in such a way that the telling of it is a gross personal outrage. A person who has detected, or thinks that he has detected, a dishonest misrepresentation in a book, has a right to expose it publicly. But he cannot be allowed to intrude into the presence of the author of the book, and to tell him to his face that he is a liar. A person who knows the mistress of a female school to be a woman of infamous character deserves well of society if he states what he knows. But he cannot be allowed to follow her through the streets, calling her by opprobrious names, though he may be able to prove that all these names were merited. A person who brings to notice the malversation of a public functionary deserves applause. But a person who hangs a public functionary in effigy at that functionary's door, with an opprobrious label. does what cannot be permitted, even though every word on the label, and every imputation which the exhibition was meant to convey, may be perfectly true.

We do not apprehend that the clauses relating to the printers and publishers of defamatory matter require any explanation or defence.

499. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm, throwing or having reason to believe that such imputation will harm, the re-

or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted; to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other mean relatives.

Explanation 2.—It may amount to defamation to make an imputation coffcerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative, or express/ ed ironically, may amount to defamation.

Escplanation 4.—No imputation is said to harm a person's reputation unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loath-some state, or in a state generally considered as disgraceful.

Illustrations.

(a.) A says, "Z is an honest man; he never stole B's watch;" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

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(b.) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the excep-

(c.) A draws a picture of Z running away with B's watch, intending it to be believ- /

ed that Z stole B's watch. This is defamation, unless it fall within one of the excep-First Exception.—It is not defamation to impute anything which is true

concerning any person, if it be for the public good that the imputation should be made or published. Imputation of truth which public good requires to be made or published. Whether or not it is for the public good, is a question of fact. Second Exception.—It is not defamation to express in good faith any conduct of public opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or

respecting his character, so far as his character appears in that conduct, and Third Exception.—It is not defamation to express in good faith any opiany person nion whatever respecting the conduct of any person touching any public question. touching any public question and respecting his character, so far as his character appears in that conduct, and no farther.

Illustration. Z's conduct in petitioning Government on a public question, in signing a requisition for

a meeting on a public question, in presiding or attending at such a meeting, in forming

It is n ot defamation in A to express in good faith any opinion whatever respecting

or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested. Fourth Exception.—It is not defamation to publish a substantially true re-

port of the proceedings of a Court of Justice, or of Publication of reports of proceedings of Courts. the result of any such proceedings.

Explanation. —A Justice of the Peace or other officer holding an inquiry in open Court prelimi nary to a trial in a Court of Justice is a Court within the

meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion Merits of case decided in whatever respecting the merits of any case, civil or

Court; or conduct of witnesscriminal, which has been decided by a Court of jusesand others concerned. tice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no farther.

Illastrations.

(e.) A says, "I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.

(b.) But if A says, "I do not believe what Z asserted at that trial, because I know him to be a man without veracity." A is not within this exception, inasmuch as the opinion

which he expresses of Z's character is an opinion not founded on Z's conduct as a wit-Sixth Exception:—It is not defamation to express in good faith any opi-Merits of public perform nion respecting the merits of any performance which

- Fair comments author has submitted to the judgment of the pub-

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all this the imputation need all be tru Station is made adepart lic, or respecting the character of the author, so far as his character appears in such performance, and no farther. Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public. Illustrations. (a.) A person who publishes a book submits that book to the judgment of the public. (b.) A person who makes a speech in public submits that speech to the judgment of the public. (c.) An actor or singer who appears on a public stage submits his acting or singing to the judgment of the public. (d.) A says of a book published by Z, "Z's book is foolish, Z must be a weak man; Z's book is indecent, Z must be a man of impure mind." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no farther. (e.) But if A says, "I am not surprised that Z's book is foolish and indecent, for he is a weak man, and a libertine," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book. Seventh Exception.—It is not defamation in a person, having over another any authority either conferred by law or arising out Censure passed in good faith by person having lawful of a lawful contract made with that other, to pass in authority over another. good faith any censure on the conduct of hat other in matters to which such lawful authority relates. Illustration. A Judge censuring in good faith the conduct of a witness or of an officer of the Court . a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception. Eighth Exception. It is not defamation to prefer in good faith an accu-Accusation preferred in sation against any person to any of those who have to authorized lawful authority over that person with respect to the subject-matter of accusation. Illustration. If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z. a child, to Z's father—A is within this exception. Winth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation Imputation in good faith by person for protection of his interests. be made in good faith for the protection of the interests of the person making it, or of any other . D. This sum to well the person, or for the public good. Illustrations. (a) A, a shop-keeper, says to B, who manages his business, "Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within this exception, if he has made this imputation on Z in good faith for the protection of his own interests.

in two cases onl - (a) when the publication is for public one: 6); I (b) when it is a report of proceedings in Cu

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render these exceptions mere multities -

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[SBC. 499.

(b.) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith and for the public good, A is within this exception.

Tenth Exception.—It is not defamation to convey a caution, in good faith,

Caution intended for good of person to whom conveyed or for public good.

To one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

CASE of defamation in which the complainant admitted all the more serious charges on which he based his complaint. Conviction and sentence quashed, as the gist of the offence (view that the charge was not made in good faith) was entirely lost sight of. Compensation is not awardable in such cases.—ASSURUDDEE KHAN v. BALOO KHAN, I. W. R. 6. [Lemp and Glover, J]. Aug. 17, 1864.]

A SIMPER assertion (nowhere disproved) regarding the way in which a sarishtadar had issued parwanas in an arbitration-suit does not amount to defamation.—QUEEN v. HEM CHUNDER MOOKERJEE, I W. R. 24. [Kemp and Glover, J]. Nov. 18, 1864]

A WROTE to B, informing him that he (B) was no gentleman. A question arose as to the remedy which B had against A. A charge of defamation would not lie under this section, because, under the fourth explanation, no imputation is said to harm a person's reputation, unless that imputation, directly or indirectly, lowers the character or credit of that person; and it could not be held that the mere writing of a letter to a person lowers his character or credit in the estimation of others. B's only remedy then was under s. 504, and whether A, by informing B that he was no gentleman, intended or knew it to be likely that the provocation would cause him to break the public peace, was a question of fact to be determined by the Magistrate who tried the case.—Book Circular VIII., Criminal Side, Feb. 3, 1865, Jud. Com., Oudh, Currie's Penal Code, p. 406.

A FALSE accusation not made in good faith renders the party making it liable to be charged with defamation. The fact that the complainant is a man of low caste will not debar him from prosecuting for defamation on his being falsely charged with theft.—QUEEN v. NOB'N DOME, 2 W. R. 35. [Trevor and Loch,]]. Feb. 17, 1865.]

The Penal Code makes no distinction between written and spoken defamation.—Queen v. Mohunt Pursoram Doss, 2 W. R. 36. [Kemp and Glover, J]. Feb. 22, 1865.]

A PERSON using defamatory expressions for the protection of his son's interests is not privileged unless the imputation is made in good faith, i. e., with due care and attention.—Queen v. Pursoram Doss, 3 W. R. 45. [Kemp and Glover, J]. July 12, 1865.]

ACT XVIII. of 1862 refers only to the High Court in its Original Criminal Jurisdiction, and is not applicable to Mofussil Courts. S. 27 of that Act requires proof of the existence of the circumstances relied on as a defence before good faith can be presumed in a case of defamation. The onus of proving good faith is on the person making the imputation. Before such person can claim the benefit of excep. 9, s. 499 of the Penal Code, he must show that he has exercised due care and caution.—Seally v. Ramnarain Bose, 4 W. R. 22. [Glover, J. Nov. 8, 1865.]

In a case of defamation, proof of despatch by post, to a certain district, of the paper containing a defamatory matter, is tantamount to proof of publication thereof in the district.—Queen v. Kalli Doss Mitter, 5 W. R. 44. [Campbell and Glover, JJ. Mar. 3, 1846.]

The accused, an inspector of police, was sent to inquire if it was true that one Brojonath was a leader of dacoits. He reported that it was false, and that the baniyas of the village were trying to get him punished from an ill-feeling. He added, "I learnt from private inquiries that there is scarcely a woman in the houses of the baniyas who has not passed a night or two with the defendant Brojonath." Commitment of the accused for trial for defamation under s. 499 supported under the circumstances of the case. Held that, as the report was made by the police-officer in the execution of his duty, and contained imputations which did not appear to be made recklessly or unjustifiably, the eport did not amount to defamation, but was covered by the oth exception to s. 499 of the Penal Code.—In re RAJINGRAIN SEN, 14 W. R. 22; 6 B. L. R., Ap., 42. [Phear and Mitter, J]. July 23, 1870.]

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[P. C.64.]

The act of filing in Court a petition, containing imputations, concerning a person calculated to harm his reputation, with the intention that it should be read by other persons, amounts to making or publishing the imputations within the meaning of s. 499 of the Penal Code. The criminal law of this country with regard to defamation depends on the construction of s. 499 of the Penal Code, and not on what may be the English law on the same subject.—Green (Dr. J.A.) v. Delanney (J.P.), 14 W. R. 27. [Phear and Jackson, JJ. Aug. 3, 1873]

A PLEADER or mukhtar, relying upon the statements of his client, and in good faith introducing into a pleading a defamatory averment, will be protected from liability for defamation by the 9th exception to s. 500 of the Penal Code; but the case is otherwise if the pleading be prepared by a person who has no such employment, and does not act in good faith.—QUEEN v. CHRESTIEN, 2 N.-W. P. 473. [Turner, J. Dec. 46, 1870.]

WHERE a person, while a defendant in a criminal case, used certain defanatory expressions, without due care and attention, against the prosecutor, it was held that such person was liable to a charge of defamation.—5 Rev., Jud., and Pol. Jour. 42.

A LETTER written by a Brahman to the Brahman community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interests and that of the Brahman community, if written in good faith, falls within exceps. 8 and 10 of s. 400 of the Penal Code.—Reg. v. Kashinath Bachaji Bagul, 8 Bom H. C. R. 168. [Melvill and Kemball, J]. Aug. 31, 1871.]

The gumashta of a guru or priest was convicted of defamation for having published an order of his master excommunicating the complainant from his caste. The letter publishing the excommunication was a statement that complainant disobeyed some one, and treated him with disrespect. Held that the letter contained no expressions defamatory per se. If the per son so treated was in a position entitling him to demand submission, and to make non-submission an offence, then that position would render the communication privileged, and, if not, then the mere statement that the complainant did not obey one whom he was not bound to obey was not a defamatory impurgition.—Pro., Dec. 20, 1871, 6 Mad. H. C. R., Ap., 46.

In framing a charge of defamation it is not necessary to negative the exceptions contained in s. 400 of the Penal Code. It is not an error in law for a Judge to require a person accused of defamation to prove the several distinct imputations contained in a libellous article published by him, with the same strictness with which he would be required to prove them if he were the defendant in a civil action. The High Court, as a Court of Revision, cannot interfere with the findings of the Lower Appellate Court on questions as to the truth of the allegations contained in a libel or the bona fides of the accused, but upon such questions are bound by the findings of the lower Court.—Reg. v. Kihabhai Parbhudas, 9 Bom. H. C. R. 451. [Lloyd and Kemball, J]. Dec. 5, 1872.]

To sustain a charge of defamation it is not necessary to prove that the complainant actually suffered, directly or indirectly, from the scandalous imputation alleged; it is sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant.—Queen v. Thakur Doss, 6 N.-W. P. 85. [Turner, J. Feb. 2, 1874.]

ACCUSED, a petition-writer, wrote for presentation to the Commissioner's Court a memorandum of appeal in which he alleged that the order appealed from was based on "conjectural grounds," and that a certain statement made in the order was "atterly false." The Commissioner directed the Deputy Commissioner to pass a proper order in the mater, whereupon the Deputy Commissioner treated the case as one under s. 500, and after inquiry convicted accused. Held that the conviction was illegal, no complaint having been made to the Deputy Commissioner within the meaning of s. 142 of the Criminal Precedure Code (corresponding with ss. 191, 193, Act X. of 1882).—Nabi Shah v. Crown, Panj. Rec., No. 15 of 1878.

The accused person an editor of a newspaper, published an article in which the following passage, admittedly referring to the complainant, occurred: "Has his (the complainant's) character been inquired into? Does no one remember that this very man was sent by the Subordinate Judge of Sholapur to be prosecuted? Are not the proceedings instituted by the Subordinate Judge to be found on the record? The Magistrate found that it was literally true that the complainant had been sent to be presecuted, but that it was also true that the prosecution had, to the accused's knowledge, been ordered to be

tithdrawn by the District Judge. Held that, although the statement contained only the just, it was incomplete and misleading; and that, as the accused was well aware that he prosecution referred to had been withdrawn, and did not injuriously affect the comfainant's character, he could not plead that the imputation made by him on the comfainant's character was made in good faith or for the public good.—IMPERATRIX V. KAKDE B.), I. L. R, 4 Bom. 298. [Melvill and Pinhey, JJ. Feb. 12, 1880.]

M, A medical man, and editor of a medical journal published monthly, said in such fournal of an advertisement published by H, another medical man, in which H solicited the public to subscribe to a hospital of which he was the surgeon in charge, stating the number of successful operations which had been performed: "The advertiser is certainly entitled to be congratulated on this marvellous success; but it is hardly consistent with the feelings and usages of the medical profession to herald them forth in this fashion. We are not surprised to find that the line he has elected to adopt has not met with the approval of his brother officer serving in the same province and we have no hesitation in pronouncing his proceedings in this matter unprofessional." Held that, inasmuch as such advertisement had the effect of making such hospital a "public question," and of submitting it to the judgment of the public," and M had expressed himself in good faith, M was within the third and sixth exceptions, respectively, to s. 499 of the Penal Code. Held also that M came within the ninth exception to that section. The sending of a newspaper containing defamatory matter by post from Calcutta, where it is published, addressed to a subscriber at Allahabad, is a publication of such defamatory matter at Allahabad. The publisher of a newspaper is responsible for defamatory matter published in such paper, whether he knows the contents of such paper or not.—Empress v. McLeod, I. L. R., 3 All. 342. Stuat, C.J. Dec. 7, 1880]

Where the Magistrate convicted accused, a police-officer, on a charge of defamation, on account of a statement made by him in a report to his superior officer, which statement he had elicited from a third party in the course of a police-inquiry, the Chief Court, on the revision side, set aside the conviction and sentence as unsustainable, holding that the accused was merely acting in the discharge of his duty, and that the report was clearly privileged.—Empress v. Sher Singh, Panj. Rec., No. 23 of 1880.

C was put out of caste by a panchayat of his caste-fellows, on the ground that there was an improper intimacy between him and a woman of his caste. Certain persons, members of such panehayat, circulated a letter to the members of their caste generally, in which, stating that C and such womin had been put out of caste, and the reason for the same, and requesting the members of the caste not to receive them into their houses, or to eat with them, they made certain statements applying equally to C or such woman. Such statements were defamatory within the meaning of s. 499 of the Penal Code. Held that, if such persons were careless enough to use language which was applicable to C, they did so at their peril, and they could not escape the responsibility of having defamed C by saying that they intended such language to apply to such woman. Held also, on the question whether such persons had acted in good faith, that, looking to the character of suc's letter, the circumstances under which it was written, and to the fact that C had been put out of caste for the reason alleged, had such persons contented themselves with annguncing the fletermination of the panchayat, and the grounds upon which such determination was based, they would have been protected; but, inasmuch as they did not so content themselves, but went further, and made false and uncalled for statements regarding C, they had rightly been held not to have acted in good faith.—EMPRESS v. RAMANAND, I. L. R., 3 All. 664: . [Straight, J. Mar. 28, 1881.]

THE law of defamation which should be applied in suits in India for defamation is that laid down in the Indian Penal Code, and not the English law of libel and Slander. Held therefore, that defamatory statements are not privileged merely because they are used in a petition preferred in a judicial proceeding. It is not essential that before a person can be held entitled to the privilege of having made a statement in good faith for the protection of his interests, he should establish that every word he has spoken or written is literally true. If, having regard to facts and circumstances within his knowledge, he might, as an ordinarily reasonable and prudent man, have drawn the conclusions which has expressed in defamatory language for the protection of his own interests, he may fairly be held to have made out his good faith.—Abdool Hakim v. Tej Chander Mudarji, I. L. R., 3 All. 815. [Straight and Tyrrell, J]. May 20, 1831.]

N HAVING attended a Hindu widow marriage (legalized by Act XV. of 1856), S, his guru or spiritual superior, published a notice declaring N to be an outcaste, and

forbidding the disciples of S and the public of the town in which N fived to associate with N, until he submitted to the prescribed penance, and obtained a certificate of purification from S. S also sent by post a registered post-card of similar purport to N. In consequence of the interdict of S. N was prevented from performing vows in the temple, lost the society of his relatives, and was otherwise damnified. N charged S with criminal intimidation, intimidation by attempt to induce a belief that by an act of the offender the person intimidated will become an object of divine displeasure, and defamation. Held that the first two charges were unfounded, but that S, by communicating the sentence of excommunication by a registered post-card to N, was guilty of defamation.—Querner. Sankara, I. L. R., 6 Mad. 381. [Turner, C. J., and Muttusami Ayyar, J. April 20, 1883.]

WHERE a person, called upon by a panchayat, convened by the complainant's relatives, to explain why he had made a defamatory remark concerning the complainant, made a statement by way of explanation, held that, such statement being privileged, & conviction for defamation for making such statement was illegal.—In re GOVINDAPPA, I. I. R., 7 Mad. 36. [Turner, C.J. May 7, 1883.]

Held, on the evidence in this case, in which the question was whether a person accused of defamation was protected by the eighth exception to s. 499 of the Penal Code, that the accused had failed to establish that he acted in good faith. Abul Hakim v. Tei Chundra Mukarji (I. L. R., 3 All. 817) referred to. Where the accused in a case of defamation intends to bring evidence to prove the truth of the defamatory matter, his advocate should cross-examine the complainant upon every matter upon which evidence is intended to be brought. If he does not do so, it is a subject of serious consideration whether he should subsequently be allowed to tender proof of the material incident of which he has not cross-examined upon.—Empress v. Dhum Singh, I. L. R., 6 All. 220. [Straight, J. Feb. 15, 1884.]

Held by the Full Bench (Duthoit, J., dissenting) that the action of a person who sent to a public officer by post, in a closed cover, a notice under s. 424 of the Civil Procedure Code, containing imputations on the character of the recipient, but which was not communicated by the accused to any third person, was not such a making or publishing of the matter complained of as to constitute an offence within the terms of s. 499 of the Penal Code.—Queen. Empress v. Takii Husain, I. L. R., 7 All. 205. [Petheram, C.J., and Oldfield, Brodhurst, Mahmood, and Duthoit, JJ. Dec. 6, 1884.]

In a prosecution for defamation under s. 500 of the Penal Code, the alleged libel accused the complainant, who was a judicial officer, of (i) having, upon a particular occasion, used abusive language to certain respectable native litigants appearing before him in Court. and (ii) having, upon other occasions not specified, treated other respectable natives (not named) "in a similar manner." This latter accusation was contained in a postscript. The complaint filed by the complainant in the Court of the committing Magistrate, and the charge-sheet in which the Magistrate committed the defendant for trial, covered the whole of the document complained of, except the postscript. At the trial of the case the defendant pleaded not guilty, and also relied on the first, eighth, and ninth exceptions to s. 400 of the Penal Code. The prosecution gave evidence to prove that, in making the charges contained in the alleged libel, the defendant was actuated by express malice towards the complainant. Held, with reference to the terms of s. 499 of the Penal Code, that evidence of particular instances of abusive language applied by the complainant upon former occasions to natives appearing in his Court was admissible, first, as relating to the question what was the reputation which the defendant was said to have injured, and secondly, because it must be gathered from the document complained of as a whole whether it showed a malicious intention or not.—LAIDMAN v. HEARSEY, I. L. R., 2 All. 906. [Petheram, C.J. July 21, 1885.]

WHERE a Judge was charged with using defamatory language to a witness during the trial of a suit, held that, under s. 197 of the Code of Criminal Procedure, the complaint could not be entertained by a Magistrate without sanction.—In re Golam Muhammad Sharif-ud-daulah, I. L. R., 9 Mad. 439. [Parker, J. Jan. 8, 1886.]

On the prosecution of the editor of a newspaper for defamation under s. 500 of the Penal Code by publishing a libel in his paper, an attested copy of a declaration made by the editor under s. 5 of Act XXV. of 1867, to the effect that he was the printer and publisher of the newspaper, was produced in evidence by the complainant. The editor having been convicted by the Magistrate, the Sessions Court on appeal quashed the conviction on the ground there was no evidence that the editor was the writer of the libel er

permitted its publication. Held that, in the absence of proof to the contrary, the declaration was prime-facie proof of publication by the editor. Held also that it would be a sufficient answer to the charge if the editor proved that the libel was published in his absence and without his knowledge, and that he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person.—RAMASAMI L. L. R., 9 Mad. 387. [Collins, C.J., and Muttusami Ayyar, J. April 12, 1886.]

An advocate include cannot be proceeded against civilly or criminally for words uttered in his office as advocate.—Sullivan v. Norton, I. L. R., 10 Mad. 28. [Collins, C.J., and Kernan, Muttusami Ayyar, Brandt, and Parker, JJ. Sep. 24, 1886.]

EXPL. 4 of s. 499 of the Penal Code does not apply where the words used and forming the basis of charge are per se defamatory; though, when the meaning of words spoken or written is doubtful, and evidence is necessary to determine the effect of such words, and whether they are calculated to harm a particular person's reputation, it is possible that the principle enunciated in the explanation might and would with propriety be applied.—QUEEN-EMPWESS v. McCARTHY, I. L. R., 9 All. 420. [Straight and Tyrrell,]]. Feb. 7, 1887.]

A COMPLAINT was filed, under s. 400 of the Penal Code, against the proprietors, editor, and printer of a newspaper for publishing matter alleged to be defamatory. The Magistrate, before whom the complaint was lodged, found that the publication complained of was a mere reproduction or republication of what had been previously printed and published in another newspaper. He was, therefore, of opinion that, unless and until criminal proceedings had been taken in respect of the earlier publication, a charge of defamation could not properly be brought with regard to the later publication. He, therefore, dismissed the complaint under s. 203 of the Code of Criminal Procedure (Act X. of 1882). Held that the order of dismissal was improper. The Penal Code (s. 499) makes no exception in favour of a second or third publication as compared with a first. If the complaint is properly laid in respect of a publication which is prima facie defamatory, the Magistrate is bound to take cognizance of the complaint, and deal with it according to law.—In re Howard, I. L. R., 12 Bom. 167. [West and Birdwood, J]. Aug. 25, 1887.]

WHEN a married woman is defamed by the imputation of unchastity, her husband is a person aggrieved, upon whose complaint the Magistrate may take cognizance of a complaint under the Criminal Procedure Code, s. 198.—CHELLAM NAIDU v. RAMASAMI, l. L. R., 14 Mad. 379. [Muttusami Ayyar and Wilkinson, JJ. Jan. 22, Feb. 3, 1891.]

The editor and proprietor of a newspaper, who prints his paper containing a defamatory article in one city, and permits copies of the paper to be sent by the printer to persons in another city, is responsible, in the absence of proof to the contrary, for the publication of the defamatory article in that city.—Queen-Empress v. Girjashankar Kashiram, I. L. R., 15 Bom. 286. [Birdwood and Parsons,]]. Sep. 24, 1890.]

In order to substantiate a defence under the ninth exception to s. 499 of the Penal Code (Act XLV. of 1860), it is sufficient to show that the imputation was made in good faith, and for the protection of the interest of the accused. Any one in the transaction of business with another has a right to use language bond fide which is relevant to that' business, and which a due regard to his own interest makes necessary, even if it should directly or by its consequences be injurious or painful to another. The complainant, Haji Jusub Pirbhoy, and his partner Baladina, were owners of the steam-ship "Tanjore." The ship was mortgaged to the Bank of Bengal for Rs. 50,000. In March 1890, the complainant desired to send the vessel to Jeddan with pilgrims and freight. For this purpose, he entered into an agreement with Mr. Slater, the Agent of the Bank, to pay Rs. 5,000 to the Bank as a condition precedent to the vessel being allowed by the mortgagees to go on her intended yoyage. The sum was to be paid out of the freight and passagemoney collected by the complainant. On the 9th April 1890, on which day the vessel sailed, the complainant promised to pay the sum in the evening. This he did not do. Thereupon Mr. Slater wrote to the complainant, demanding immediate payment of the amount, and also sent for him five or six times, but the complainant neither called at Mr. Slater's office, nor made the payment. On the 12th April Mr. Slater wrote to the com-plainant's partner as follows: "Haji Jusub Pirbhoy (i. e, the complainant) has misappropriated the Rs. 3,000 which were to have been paid to the Bank for allowing the 'Eanjore' to go to Jeddah, and is keeping out of the way." Immediately after the receipt

of this letter, the complainant tendered the money to the Bank's solicitors. Thereupon Mr. Clater wrote to Baladina on the 13th April, withdrawing the statement made by him about the complainant in his letter of the 12th April. On the 14th April, the complainant filed a complaint against Mr. Slater, charging him with defamation in his letter of the 12th April 1890. Mr. Slater was convicted by the Magistrate under s 500 of the Penal Code, and sentenced to pay a fine of Rs. 200. Held, reversing the conviction and sentence, that the imputations complained of were made in good faith, and for the protection of the interest of the accused, and, therefore, fell under the ninth exception to s. 499 of the Penal Code.—Queen-Empress v. E. M. Slater, I. L. R., 15 Bom. 351. [Birdwood and Cands.] J. Aug. 5, 1890.]

Ct. of Ses., Presy. Mag., or Mag. of orst class. Urkog. Warrant. Bailable. Comp. 500. Whoever defames another shall be punished with simple imprison-Punishment for defamament for a term which may extend to two years, or with fine, or with both.

M S was convicted under s. 500 of the Penal Code of defaming S S by making a certain statement when under cross-examination as a witness before a Court of criminal jurisdiction. Held that the conviction was bad. The statements of witnesses are privileged; if false, the remedy is by indictment for perjury, and not for defamation MANJAYA v. SESHA SHETTI, I. L. R., 11 Mad. 477. [Collins, C.J., and Shephard, J. April 11 and 24, 1888.]

The complainant, a Brahman, who had been put out of caste, was re-admitted by the executive committee of the caste after performing expiatory ceremonies. This re-admission was not approved of by the accused, who formed a faction of the caste; and they, after an interval of six months, distributed in the bazaar to all classes of the public printed papers, in which the complainant was described as a "doshi," or sinner, which signified that he was a person unfit to be associated with. The accused were charged with the offence of defamation. They pleaded privilege, and it was admitted that they had acted without malice. Held that the accused had not acted in good faith, and that the publication was not, under the circumstances, privileged and protected by the Penal Code, s. 499, excep. 10, and that the accused were accordingly guilty of defamation.—Thiagaraya v. Krishnasami, I. L. R., 15 Mad. 214. [Collins, C.J., and Parker,]. Feb. 3, 4, and 9, 1892.]

A PERSON who was being defended by counsel on a criminal charge interfered in the examination of a witness, and made a defamatory statement with regard to his character. He was now charged with defamation, and convicted in the Resident's Court at Bangalore. On an appeal to the High Court, preferred more than sixty days after the conviction, held (1) that the appeal should be admitted; (2) that the occasion was not privileged, and the words complained of were uttered maliciously, and the conviction was right.—HAYES T. CHRISTIAN, I. L. R., 15 Mad. 414. [Collins, C.J., and Parker, J. Feb. 24, Mar. 1, 4892.]

A WITNESS cannot be prosecuted for defamation in respect of statements made by sim when giving evidence in a judicial proceeding.—QUEEN-EMPRESS v. BABAII, I. L. R., 17 Bom. 127. [Birdwood and Parsons, JJ. April 8, 1892]

A STATEMENT made in answer to a question put by a police-officer under the Cristical Procedure Code, s. 161, in the course of investigation made by him, is privileged, and cannot be made the foundation of a charge of defamation — QUEEN-EMPRESS DE GOVINDA PILLAI, I. L. R., 16 Mad. 235. [Collins, C.]., and Handley, J. Sep. 1, 1892.]

A WITNESS cannot be prosecuted for defamation on account of statements made when giving evidence in the witness-box.—QUEEN-EMPRESS v. BALKRISHNA VITHAL, I.L. R., 17 Bom. 573. [Telang and Fulton,]]. Jan. 17, 1893.]

The mere sending a notice to a person, albeit containing matter of a defamatory nature, cannot be held to be equivalent to making or publishing an imputation "intending to harm, or knowing or having reason to believe that it will harm, the reputation of the person to whom it is addressed." Where the accused sent by post a notice to the complainant, containing certain false imputations, and the complainant thereupon prosecuted the accused on a charge of defamation under s. 500 of the Penal Code, held that the accused was not guilty of defamation.—Queen-Empress v. Sadashiv Atmaram, I. E. R., 18 Born. 505. [Candy and Fulton, J]. Mar. 1, 1893.]

intimidation.

501. Whoever prints or engraves any matter, knowing or having good Ct. of Ses. reason to believe that such matter is defamatory of Presy. Ma Printing or engraving matany person, shall be punished with simple imprison- or Mag. of 1st ter known to be defamatory. ment for a term which may extend to two years, or with fine, or with both.

Uncog. Warrant,

502. Whoever sells or offers for sale any printed or engraved substance Bailable. Sale of printed or engraved ostance containing defanatory matter.

containing defamatory matter, knowing that it con- Comp. tains such matter, shall be punished with simple imprisonment for a term which may extend to two years. or with fine, or with both.

CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE. **508.** Whoever threatens another with any injury to his person, reputation,

or property, or to the person or reputation of any one - not Criminal intimidation. in whom that person is interested, with intent to cause in the large to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

. Rulings.

WHERE the accused went to the complainant, the brother of an adult woman, and told him that he had come from the Sarkar, and would get him six months' imprisonment if he (the complainant) did not let his sister go, it was held that these words did not constitute either criminal intimidation within the meaning of s. 503 of the Penal Code (there having been no threat of an injury in the sense of the Code), or any other offence known to the law. -REG. v. MORABA BHASKARJI, 8 Bom. H. C. R. 101. [Kemball and West, J]. July 13, 1871.]

N HAVING attended a Hindu widow-marriage (legalized by Act XV. of 1856), S, his guru, or spiritual superior, published a notice declaring N to be an outcaste, and forbidding the disciples of S, and the public of the town in which N lived, to associate with N until he submitted to the prescribed penance, and obtained a certificate of purification from S. S also sent by post a registered post-card of similar purport to N. quence of the interdict of S, N was prevented from performing vows in the temple, lost the society of his relatives, and was otherwise damnified. N charged S with criminal intimidation, intimidation by attempt to induce a belief that by an act of the offender the person intimidated will become an object of divine displeasure and defamation. that the first two charges were unfounded, but that S, by communicating the sentence of excommunication by a registered post-card to N, was guilty of defamation.—QUEEN v. SANKARA, I. L. R., 6 Mad. 381. [Turner, C J., and Muttusami Ayyar, J. April 20, 1883.]

WHERE the exercise of ecclesiastical jurisdiction is plainly ultra vires, or otherwise unsanctioned by the ordinances of a religious society, or where such ordinances controvert the general law, and in either case consequences result which the criminal law was intended to restrain, the Criminal Courts are not at liberty to decline jurisdiction. Catholic complained to a Magistrate that he had been threatened with an illegal sentence-

ateur illegally carred

of excommunication, and had been excommunicated by the ecclesiastical authorities, with a view to prevent him from asserting his legal rights in defending a civil suit concerning the property of a church. Held that, under the circumstances, the proper course was for the Magistrate to have postponed the trial till the complainant proved in a Civil Court theil legality of the action of the ecclesiastical authorities.—In re DECRUZ, I. L.R., 8 Mad. 140. [Turner, C.J., and Brandt, J. Dec. 22, 1884.]

THE accused sent a fabricated petition to the Revenue Commissioner, S D, contain. ing a threat that, if a certain forest-officer were not removed elsewhere, he would be killed. The accused was charged with the offence of criminal intimidation under s. 507 of the Penal Code (Act XLV. of 1850). The Sessions Judge found that the Commissioner had neither official nor personal interest in the forest-officer. He therefore acquitted the accused of the offence of criminal intimidation, but convicted him of an attempt to commit the offence punishable under s. 507, and sentenced him to four months' simple imprisonment. Held, reversing the conviction and sentence, that, as the person to whom the petition was addressed was not interested in the person threatened, the act intended and done by the accused did not amount to the offence of criminal intimidation within the meaning of s. 503 of the Penal Code. Per West, J.: "The offence of criminal intimidation, as defined, seems to require both a person to be threatened and another in whom he is specially interested. Then there must be the intent to cause alarm to the former by a threat to him of injury to the latter. The intent itself might be complete, though it could not be effected. But the existence of the interest seems essential to the offence, as also and equally to the attempt at the offence, since otherwise the attempt would be to do something not constituting an offence." Per Birdwood, J.: "No criminal liability can be incurred, under the Penal Code, by an attempt to do an act which, if done, would not be an offence against the Code. In the present case, therefore, if the accused was not guilty of committing criminal intimidation, because the act intended and done by him lacked an ingredient of that offence, he could not be guilty of an attempt at that offence."—Queen-Empress v. Mangesh Jivaji, I. L. R., 11 Bom. 376. [West and Birdwood, JJ. Feb. 10, 1887.]

Any Mag. Uncog. Warrant. Bailable. Comp. Joseph Jo

A ABUSED B to such an extent as to reduce B to a state of abject terror. Held that A, having given to B such provocation as would, under ordinary circumstances, have caused a breach of the peace, was guilty of an offence under s. 504 of the Penal Code.—QUEEN-ENPRESS v. JOGAYYA, I. L. R, 10 Mad. 353. [Collins, C.J., and Parker, J. July 8, 1887.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Not bailable. Not comp.

Circulating lalse report with intent to cause any officer, soldier, or sailor, in the army or navy of the officer against the State, &c. alarm to the public, and thereby to induce any person to commit an offence against the State or against the public tranquillity, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Přesy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Comp.

Punishment for criminal intimidation.

Punishment for criminal intimidation.

Punishment for criminal intimidation.

With both; and if the threat be to cause death or grievous hurt, or to cause the or grievous hurt, &c.

With imprisonment for a term which may extend to seven years, or to impute

unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

A THREAT to commit suicide if another person refuse to do a particular act is not criminal intimidation, unless that other person be interested in the person making the threat.—Nubi Buksh v. Mussammat Oomra, Panj. Rec., No. 109 of 1866.

Bailable.

An accused, who threatened three witnesses, was convicted and sentenced to four months' imprisonment for the threat to each witness—in all to one year. It was held that, if a person at one time criminally intimidates three different persons, and each of those persons brings a separate charge against him, the accused may be convicted for an offence as against each person, and be punished separately for each offence. The facts and evidence in this case, however, were considered insufficient to support the sentence, which was reversed as extremely harsh and unjust.—Reference in the Case of Goolzar Khan, 9 W.R. 30. [Kemp and Jackson, JJ. Mar. 10, 1868.]

WHERE the accused went to the complainant, the brother of an adult woman, and told him that he had come from the Sarkar, and would get him six months' imprisonment if he (the complainant) did not let his sister go, held that these words did not constitute either criminal intimidation within the meaning of s. 503 of the Penal Code (there having been no threat of an injury in the sense of the Code), or any other offence known to the law.—Reg. v. Moraba Bhaskarji, 8 Bom. H. C. R. 101. [Kemball and West, J]. July 13, 1871.]

An intention to intimidate, insult, or annoy any person in possession of a house does not mean to insult or annoy any person in constructive, but in actual, possession of the premises.—ISHUR CHUNDER KURMOKAR V. SEETUL DASS MITTER, 17 W. R. 47; 8 B. L. R., Ap., 62. [Couch, C.]., and Ainslie, J. April 6, 1872.]

The threat referred to in s. 503 of the Penal Code must be a threat communicated, or uttered with the intention of its being communicated, to the person threatened for the purpose of influencing his mind. The facts of the case are fully set out in the following judgment of the Court, which was delivered by Petheram, C. J.: "This is a rule which has been obtained for the purpose of revising a conviction of three men for an offence under ss. 503 and 506 of the Indian Penal Code—that is to say, for the offence of having threatened the complainant within the meaning of those sections. The charge is a charge of having threatened him on the 28th Aughran 1294, and in support of that charge, two witnesses are called, who speak to what took place on that occasion. The facts of the case up to that point are these: that the complainant had purchased a rayati tenure within the limits of the accused's zemindari, and the accused disliked his being there, and apparently, from what the witnesses say, they intimated their dislike of that to them. Two witnesses say that, on that day, they were at the house of the accused, when a piyada of theirs came and told them that the complainant, notwithstanding what they had done, was still in the place, and wapstill taking away the paddy on the land, upon which the accused said that they would beat him, and set fire to his house. Assuming that to be true, the question is, whether that is a threat within the meaning of the section. The section which defines the offence is s. 503, and it is in these words: 'Whoever threatens another with any injury to his person. reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. It is clear that the gist of the offence, as defined in that section, is the effect which the threat is intended to have upon the mind of the person threatened, and it is equally clear that, before it can have any effect upon his mind, it must be either made to him by the person threatening, or communicated to him in some way. In this particular case there is no suggestion that the threat was made to the person threatened. All that happened was that, in the presence of some persons, the accused used the words I have quoted in their house. In one sense these words amount to a very bad threat; but there is no evidence on the face of them, and there is no other evidence, that they intended that the words should be communicated to the complainant for the purpose of influencing his mind. It seems to us that the evidence in the case falls far short of establishing the offence defined by this section, which is, in our opinion, a threat communicated, or uttered with the intention of its being communicated, to the person threatened, for the purpose of influencing that man's mind. In this case there is nothing whatever to show that it was the intention of the accused that the threat should

- †Ct. of Ses. Presy. Mag. or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

> 1900.13 503 See

be communicated to the complainant. The complainant himself was called, and he does not say that he ever heard this particular threat. Though he spoke of a threat uttered on some other occasion, he does not say that the threat, which is the subject of this charge, was ever communicated to him, or that he ever heard it. Under these circumstances we think that there is no evidence of an offence having been committed under this section, and that this rule must be made absolute."—Gunga Chunder Sen v. Gour Chunder BANIKYA, I. L. R., 15 Cal. 671. [Petheram, C.J., and Tottenham J. July 4, 1888.]

Ct. of Ses., Presy, Mag., or Mag. of 1st class. Uncog. Warrant. .Bailable. Nôt comp.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution Criminal intimidation by an to conceal the name or abode of the person from anonymous communication. whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

THE accused sent a fabricated petition to the Revenue Commissioner, S. D., containing a threat that, if a certain forest-officer were not removed elsewhere, he would be killed. The accused was charged with the offence of criminal intimidation under s. 507 of the Penal Code (Act XLV. of 1860). The Sessions Judge found that the Commissioner had neither official nor personal interest in the forest-officer. He, therefore, acquitted the acthe offence punishable under s. 507, and sentenced him to four months' simple imprisonment. cused of the offence of criminal intimidation, but convicted him of an attempt to commit ment. Held, reversing the conviction and sentence, that, as the person to whom the petition was addressed was not interested in the person threatened, the act intended and done by the accused did not amount to the offence of criminal intimidation within the meaning of s. 503 of the Penal Code. Per West J.: The offence of criminal intimidation, as defined, seems to require both a person to be threatened and another in whom he is specially interested. Then there must be the intent to cause alarments former by a threat to him of injury to the latter. The intent itself might be complete, though it could not be effected. But the existence of the interest seems essential to the offence, as also and equally to the attempt at the offence, since otherwise the attempt would be to do something not constituting an offence." Per Birdwood, J.: "No criminal liability can be incurred, under the Penal Code, by an attempt to do an act, which, if done, would not be an offence against the Code. In the present case, therefore, if the accused was not guilty of committing criminal intimidation, because the act intended and done by him lacked an ingredient of that offence, he could not be guilty of an attempt at that offence."
—QUEEN-EMPRESS v. MANGESH JIVAJI, I. L. R., 11 Bom. 376. [West and Birdwood, J]. Feb. 10, 1887.]

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

508. Whoever voluntarily causes or attempts to cause any person to do Act caused by inducing a person to believe that he will be rendered an object of divine displeasure.

anything which that person is not legally bound to do, or omit to do anything which he is legally entitled to do, by inducing or attempting to sinduce that person to believe that he or any person in whom

he is interested will become or will be rendered by some act of the offender an object of divine displeasure if he does not do the thing which if is the ob. ject of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations.

- (a.) A sits dharna at Z's door with the intention of causing it to be believed that by so sitting he renders Z an object of divine displeasure. A has committed the offence defined in this section.
- (b.) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of divine displeasure. A has committed the offence defined in this section.

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fine. or with both.

V. Wy.

Rulings.

N HAVING attended a Hindu widow-marriage (legalized by Act XV. of 1856), S, his guru, or spiritual superior, published a notice declaring N to be an outcaste, and forbidding the disciples of S and the public of the town in which N lived to associate with N until he submitted to the prescribed penance, and obtained a certificate of purification from S. S also sent by post a registered post-card of similar purport to N. In consequence of the interdict of S, N was prevented from performing vows in the temple, lost the society of his relatives, and was otherwise damnified. N charged S with criminal intimidation by attempt to induce a belief that, by an act of the offender, the person intimidated will become an object of divine displeasure, and defamation. Held that the first two charges were unfounded, but that S, by communicating the sentence of excommunication by a registered post-card to N, was guilty of defamation.—QUEEN v. SANKARA, I. L. R., Mad. 381. [Turner, C.J., and Muttusami Ayyar, J. April 20, 1883.]

WHERE the exercise of ecclesiastical jurisdiction is plainly ultra vires, or otherwise unsanctioned by the ordinances of a religious society, or where such ordinances controvert the general law, and, in either case, consequences result which the criminal law was intended to restmin, the Criminal Courts are not at liberty to decline jurisdiction. A Roman Catholic complained to a Magistrate that he had been threatened with an illegal sentence of excommunication, and had been excommunicated by the ecclesiastical authorities, with a view to prevent him from asserting his legal rights in defending a civil suit concerning the property of a church. Held that, under the circumstances, the proper course was for the Magistrate to have postponed the trial till the complainant proved in a Civil Court the illegality of the action of the ecclesiastical authorities.—In re D'CRUZ,

I. L. R, 8 Mad. 140. [Turner, C.J., and Brandt, J. Dec. 2, 1884.] **509.** Whoever, intending to insult the modesty of any woman, utters any Presy. Mag. word, makes any sound or gesture, or exhibits any or Mag. of 1st Words of gesture intended object, intending that such word or sound shall be Uncog. to insult the wodesty of a woheard, or that such gesture or object shall be seen, Warrant. by such woman, or intrudes upon the privacy of such woman, shall be punished. Not comp.

with simple imprisonment for a term which may extend to one year, or with

510. Whoever, in a state of intoxication, appears in any public place, or Any Mag. Uncog. Misconduct in public by a in any place which it is a trespass in him to enter, Warrant. drunken person. and there conducts himself in such a manner as to Bailable. cause annoyance to any person, shall be punished with simple imprisonment. Not comp. for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

CHAPTER XXIII.*

OF ATTEMPTS TO COMMIT OFFENCES.

Triable by Court by which the offence attempted is triable. Cog. if offence

attempted is

or summons

according as

the offence is one in respect

shell issue

of which a

warrant or

summons shall ordina-

rily issue.

Bailable if

offence contemplated is bailable. Compound-

able if offence

attempted is compoundable.

cog. Warrant

Punishment for attempting to commit offences punishable with transportation or imprisonment.

Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such

an offence to be committed, and in such attempt. does any act towards the commission of the offence. shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or

imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(a.) A makes an attempt to steal some jewels by breaking open a box, and ands, after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b.) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

Rulings.

The term of imprisonment for attempting to fabricate false evidence for the purpose of being used in a stage of judicial proceeding cannot extend beyond one-half of seven years.—QUBEN v. SOONDUR PUTNAICK, 3 W. R. 59. [Kemp and Seton-Karr, JJ. Aug. In the case of a conviction of attempting to commit house-breaking by night with in-

tent to commit theft, a sentence of whipping was annulled as being illegal.—Reg. v. Yella valad Parshia, 3 Bom. H. C. R. 37. [Couch, C.J., and Newton, J. Nov. 21, 1866]

ATTEMPT at murder must not be confounded with causing grievous hurt with dangerous weapons .- GHOLAM RUSSOOL v. CROWN, Panj. Rec., No. 32 of 1866. S. 511 of the Penal Code does not apply to a case of dacoity. Where a prisoner was

found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under s. 397, and a sentence of three years' rigorous imprisonment was passed on him, the finding was amended by striking out "ss. 397 and 511," and substituting "s. 395."—QUEEN v. KOONEE, 7 W. R. 48. [Jackson and Glover, JJ. Mar. 25, 1867.] Mar. 25, 1867.

In order to constitute the offence of attempt to murder under s. 307, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. Aliter under s. 511 taken in connection with ss. 299 and 300. Therefore, where the prisoner presented to uncapped gun at F G (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger,

^{*} NOTE.—Ss. 13, 14, and 15, Act XXVII., 1870 (to amend the Indian Penal Code), enact as follows :-

^{13. [}Application of certain chapters of Penal Code.]—The following chapters of the same Code, namely, IV. (General Exceptions), V. (of Abetment), and XXIII. (of Attempts to commit Offences), shall apply to offences punishable under the said ss. 121A, 204A, and 304A; and the said Chapters IV. and V. shall apply to offences punishable under the said ss. 124A and 225A.

^{14. [}Sanction to prosecution under s. 121A, 124A, or 294A.]—No charge of an offence punishable under any of the said ss. 121A, 124A, and 294A, shall be entertained by any Court unless the prosecution be instituted by order of, of under authority from, the Local

^{15. [}Saving of special and local laws.]-Nothing contained in this Act shall be taken to affect any of the provisions of any special or local law.

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CHAP. XXIII.] ATTEMPTS TO COMMIT OFFENCES.

[SEC. 511.

ield that he could not be convicted of an attempt to murder upon a charge framed under s. 307, but that, under the same circumstances, he might be convicted upon a charge of simple attempt to murder framed under s. 511 in connection with ss. 299 and 300. Unnecessary allegations in a charge may be rejected as surplusage. Apparent inconsistency between the English law with reference to attempts as laid down in Reg. v. Collins 13 L. J., M. C., 177) and the provisions of the Indian Penal Code explained.—Reg. v. Francis Cassidy, 4 Bem. H. C. R. 17. [Couch, C. J., and Westropp, J. Dec. 23, f867.]

HELD by Glover, Ja that incendiarism having, on several occasions, occurred in a village, produced by a ball of rag with a piece of burning charcoal within it, and the prisoner one evening being discovered to have a ball of that description concealed in his dhoti, which contained burning charcoal, he is, under s. 511 of the Penal Code, guilty of an attempt to commit mischief by fire. The possession of the instrument to commit mischief by fire, and the going about of the person with it, are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt. Held by Mitter, J., that the possession of a fire-ball, and moving about with it, cannot support a conviction under ss. 436 and 511 of the Penal Code. These facts are not sufficiently indicative of an intention to destroy a building used for human dwelling. To constitute an offence under s, 511 of the Penal Code, it is not only necessary that the prisoner should have done an overt act towards the commission of the offence, but that the act itself should have been done in the satempt to commit it.—Queen v. Doyal Bawri, 3 B. L. R., A. Cr., 55. [Glover and Mitter, J]. Sep. 1, 1869.] In subsequent rulings, the opinion of Mitter, J, was upheld.

A, INTENDING to procure a forged document purporting to be executed by one Chotak, applied to K to accompany A to Gorakhpur, where A said Chotak would be found, and there to draw out a bond for execution by Chotak. In pursuance of this invitation, K, believing that Chotak would execute the bond, accompanied A to Gorakhpur. A took with him fits ploughman, named Chetoo, and directed Chetoo to purchase a stamp-paper for the Bonds and to give his name and description to the stamp-vendor as Chotak. Chetoo complied with this direction, and the stamp-vendor wrote on the stamp-paper an endorsement to the effect that the purchaser was Chotak, with the description which would apply to that person, but, suspecting false personation, arrested Chetoo, and took him to the Magistrate. On the above facts, the Sessions Judge convicted A of attempt to forge a valuable security, and, under ss. 467 and 511, sentenced him to be rigorously imprisoned for five years. Held that, to constitute the offence of attempt under s. 511, Penal Code, here must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence. The provisions of s. 511, Penal Code, do not extend to make punishable as attempts acts done in the mere stage of preparation. Although such are doubtless done towards the commission of the offence, they are not done in the attempt to commit the offence within the meaning of the word "attempt" as used in the section.—Queen v. Ramsardun Chowbey, 4 N.-W. P. 46. [Turner, J. Mar. 13, 1872.]

FACTS showing that an accused person had dug a hole, intending to place salt therein, in order that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding, would justify a conviction for an attempt to fabricate false evidence.—QUEEN v. NUNDA, 4 N.-W. P. 133. [Turner and Spankie, JJ. Aug. 16, 1872.]

M INSTIGATED Z to personate C, and to purchase in C's name certain stamped paper, its consequence of which the vendor of the stamped paper endorsed C's name on such paper, as the purchaser of it. M acted with the intention that such endorsement might be used against C in a judicial proceeding. Held that the offence of fabricating false evidence had been actually committed, and M was properly convicted of abetting the commission of such offence. Queen v. Ramsarun Chowbey (4 N.-W. P. 40) distinguished and observed on.—Empress v. Mula, I. L. R., 2 All. 105. [Turner, J. Jan. 24, 1875.]

THE act of causing the publication of banns of marriage is an act done in the preparation to marry, but does not amount to an attempt to marry. Where, therefore, a man, having a wife living, causes the banns of marriage between himself and a woman to be published, he could not be punished for an attempt to marry again during the lifetime of his wife.—Reg. v. Peterson, I. L. R., I All. 316. [Pearson, J. Dec. 6, 1876.]

An indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his

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• SBC. 511.]

passions at all events, and in spite of all resistance. EMPRESS v. SHANKAR, 1. L. R., 5 Bom. 403. Melvill and Nanabhai Haridas,]]. Mar. 2, 1881.]

A PRESON cannot be convicted of an attempt to commit an offence under s. 5PI of the Penal Code unless the offence would have been committed if the attempt charged had succeeded. A prisoner, who was charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The jury explained their finding by saying that the prisoner had ordered certain receipt-forms to be printed similar to those used by the Bengal Coal Company, and that one of these forms had actually been printed, and the proof corrected by him; that the prisoner had had an intention of making such addition to the printed forms as would make it a false document; and that he did this dishonestly, and with intent to commit fraud. The Sessions Judge sentenced the prisoner to rigorous imprisonment for one year under ss. 465 and 511 of the Penal Code for attempting to commit forgery. Held that the conviction was wrong, and must be set aside.—In re RIASAT ALI, alias BABU MIYA, alias BODIUZZUMA, alias BODIUZZUMA: EMPRESS v. RIASAT ALI, alias BABU MIYA, alias BODIUZZUMA, I. L. R., 7 Cal. 352; 8 C. L. R. 572. [Garth, C.]., and Prinsep, J. June 3, 1881.

THE accused sent a fabricated petition to the Revenue Commissioner, S. D., containing a threat that, if a certain forest-officer were not removed elsewhere, he would be killed. The accused was charged with the offence of criminal intimidation under s. 507 of the Penal Code (Act XLV. of 1860). The Sessions Judge found that the Commissioner had neither official nor personal interest in the forest-officer. He, therefore, acquitted the accused of the offence of criminal intimidation, but convicted him of an attempt to commit the offence punishable under s. 507, and sentenced him to four months' simple imprisonment. Held, reversing the conviction and sentence, that, as the person to whom the petition was addressed was not interested in the person threatened, the act intended and done by the accused did not amount to the offence of criminal intimidation within the meaning of s. 503 of the Penal Code. Per West, J.: "The offerce of criminal intimidiation, as defined, seems to require both a person to be threatened and another in whom he is specially interested. Then there must be the intent to cause alarm to the former by a threat to him of injury to the latter. The intent itself might be complete, though it could not be effected. But the existence of the interest seems essential to the offence, as also and equally to the attempt at the offence, since otherwise the attempt would be to do something not constituting an offence." Per Birdwood, J.: "No criminal liability can be incurred under the Penal Code, by an attempt to do an act, which, if done, would not be an offence against the Code. In the present case, therefore, if the accused was not guilty of commita ting criminal intimidation, because the act intended and done by him lacked an ingredient of that offence, be could not be guilty of an attempt at that offence."—QUEEN-EMPRESS v. MANGESH JIVAJI, I. L. R., 11 Bom. 376. West and Birdwood, JJ. Feb. 10, 1887.

A PERSON who has been convicted of the offence of theft (an offence punishable under ch. 27 of the Penal Code) does not, on being convicted of an attempt to commit the offence of theft, become liable to the enhanced punishment allowed by s. 75 of the Penal Code.—QUEEN-EMPRESS v. SRICHARAN BAURI, I. L. R., 14 Cal. 357. [Petheram, C.J. and Cunningham, J. Mar. 19, 1887.]

A MAN may be guilty of an attempt to cheat, although the person he attempts to cheat is forewarned, and is therefore not cheated. R. v. Hensler (11 Cox. C. C. 570) referred to. M wrote a letter to the Currency Office at Calcutta, enclosing the halves of two Government currency notes, stating that the other halves were lost, and enquiring what steps should be taken for the recovery of the value of the notes. The Currency Office having, upon enquiry, discovered that the amount of the notes had been paid to the holder of the other halves, and that the notes had been withdrawn from circulation, and cancelled, sent M the usual form of claim to be filled up and returned to it. It appeared from the evidence that the Currency Office never contemplated paying M in respect of the notes. Thereform was filled up and signed by M, and returned by him to the Currency Office. Held that, although there was no intention on the part of the Currency Office to pay the amount of the notes, M was guilty of an attempt to cheat.—Govt. of Bengal v. Umesh Chunder Mitter, I. L. R., 16 Cal. 310. [Macpherson and Trevelyan, J]. Nov. 6, 1888.]

PRISONER was requested to make an entry in a book of account belonging to the complainant to the effect that he was indebted to the complainant in a certain sum found due on a settlement of account; instead of making this entry as requested, prisoner en-

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tered in a language not known to complainant that this sum had been paid to complainant. He was convicted of forgery under s. 465 of the Penal Code. Held that the offence was not forgery, but an attempt to cheat.—QUEEN-EMPRESS v. KUNJU NAYAR, I. L. R., 12 Mad. 114. [Muttusami Ayyar and Shephard, J]. Sep. 9, 20, 1888.]

S. 511 of the Indian Penal Code does not apply to attempts to commit murder, which are fully and exclusively provided for by s. 307 of the said Act. A person is criminally responsible for an attempt to commit murder when, with the intention or knowledge requisite to its commission, he has done the last proximate act necessary to constitute the completed offence, and when the completion of the offence is only prevented by some cause independent of his volition.—Queen-Empress v. Niddha, I. L. R., 14 All. 38. [Straight, J. Aug. 5, 1891.]

S. 511 of the Penal Code was not meant to cover only the penultimate act towards completion of an offence, and not acts precedent, if those acts are done in the course of the attempt to commit the offence, are done with the intent to commit it, and done towards its commission. Whether any given act or series of acts amounts to an attempt of which the law will take notice, or merely to preparation, is a question of fact in each case.—In the Matter of R. MacCrea, I. L. R., 15 All. 173. [Knox and Blair, J]. Feb. 24, 1893.]

| Offence. | Whether the police may arrest without warrant or not. | shall ordinarily issue in the first instance. | | • | |
|---|---|---|--------------|------------------|---|
| If punishable with death, transportation, or imprisonment for seven years or upwards. | May arrest without | Warrant | Not bailable | Not compoundable | |
| If punishable with imprisonment for If three years and upwards, but less than seven. | Ditto | Ditto | Ditto | Ditto | According to the provisions of section 20* of |
| If punishable with imprisonment for Sess than three years. | Shall 'not arrest without warrant | Summons | Bailable | Ditto | X. of 1882). |
| If punishable with fine only. | Ditto | Ditto | Ditto | Ditto | • |

OFFENCES AGAINST OTHER LAWS.

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er w. constantine Goodell give the following brief summany: 1. That amplete heretration with the ejaculation of sever is receiving alone to constitute rape, but that murely hastial her of the male organ believe the lips of the Valvar orifice, with a war ejamlatie is deficient. 2. That defloration of a very young Even Supposing That force was not used, should show evidence of no free the very outroporton in size between the peris to the vagina 3 by hymen is If the greatest value in intermining whether coile laken place or not, normalistending the unanimums opinion of the in the edge of the number of within which, impining to or gan with on withink the ejaculation of Semen, would no burely & tile rape as though complete her tration has occurred. So, the Difficulty + often absolute unpositible of determining whether safe been committed when my hartial heurtration has been seen + ejaculation has not like place. 6. The inability- successful to differentiate between marks of violence due to the peni abrading from attition caused by walking or some form of his - tiem - N. y. med. Rec. (See Indian med Rec Sept 16/97.

chartiday manual h. 9. (0) Duties of Panchait: (45)-(e) It aware or informed of the Commission and the seriou of any of the following offences, forthe to come the same the reported by the chankil to the Thank of falure of the chankidar to to themostres reported the same or caree to same it be reported within the bash possible delar - murder, Culpable homicist, rape D. robberg, Reft, Kidneffing, mischen by tire, house - breaking, counterfeling with coince grierons hust riol- administering stupety Commil - sabetement of the said offiner No member shell personally record any detail of the information given other the the name of the informant of the date of to information. In the event of the any likelihood of breach of the beare, to proceed to the spe & to endeavour to prevail- the distertione Punchails she be encouraged to take an act wherest in seeing that their suffason + chank go their rounds at night regularly. + ++ 1 Digitized by Google



